THE RELATIONSHIP BETWEEN VULNERABILITY AND THE CRIMINAL JUSTICE SYSTEM

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A thesis submitted to the University of Lancaster for the Degree of Doctor of Philosophy

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Word Count: 56, 122

March 2021

Abstract

This thesis explores vulnerability, specifically in relation to vulnerable and intimidated witnesses (VIW) in criminal investigations, with a focus on investigative and legal practice. Existing research surrounding VIW's in England and Wales has broadly focussed upon victims as participants, interviewing practices, and the effectiveness of measures to support VIW. This thesis focusses on policing and legal practitioners engaged in the process of criminal investigations and UK legal practice in relation to VIW. Three studies are triangulated to explore the concept of vulnerability at practitioner level, these are: a questionnaire, interviews, and a deliberative inquiry. The intention of this thesis is to improve practice around the identification of VIW's and provide empirical knowledge surrounding the management and treatment of vulnerable people within current UK policing investigative practice.

The findings of this research indicate that beliefs about witness vulnerability are influenced by the type of crime being investigated, assumptions about witness credibility, and underpinned in some cases by sporadic witness assessments. Police understandings about vulnerability are mindlessly confined to case specific, polarised, and politicised concepts with the term vulnerability being over-inclusive, therefore making it unclear to Policing who is vulnerable. There are beliefs within the legal profession surrounding physical presence in courts being best during cross-examination to serve justice. These problems exist due to the lack of evidence-based approaches within policing around vulnerability assessment, and deficient practices to deal with the impacts of mindlessness and empathy fatigue. Six principals of vulnerability are proposed to improve practice: Principal 1: Co-constructed Assessment; Principal 2: Evidence-based and co-designed active organisational communication; Principal 3: Evidence-based Wellbeing Regime; Principal 4: Organisational Vulnerability Mindfulness; Principal 5: Active Vulnerability Justice; Principal 6: Evidence-based Vulnerability Training.

Keywords: Vulnerable, Intimidated, Witness, Critical Realism, Criminal Justice

Acknowledgements

The completion of this thesis has been a long-held ambition, supported by friends, family, and colleagues who have seen the good, bad, and ugly of the PhD journey. Their time, patience, ability to listen, and provide encouragement cannot be quantified. I am eternally grateful to those who have been supportive of my further study. I cannot mention each name here, but I feel a great debt to your unrivalled support and love throughout what has, at times, been a very difficult period in my life.
I would like to acknowledge those who have sadly died and will not see my graduation. Mainly, my grandmother Edith, Grandfather Gilbert, and my beloved retired police-dog Will who was by my side through much of the final writing of this thesis.

I would not have been able to complete this thesis, and my studies, without the support of Dr Liz Bates and Dr Julie Taylor. They have equally provided stable and confident understandings which I cannot begin to thank them for. Dr Taylor has been a constant through my undergraduate, post-graduate and PhD studies. I could not describe within words what her encouragement and humour has provided to me. Dr Bates has been my most trusted advisor, and font of all knowledge; her reassurance and advice has been amazing! I also acknowledge Dr Audrey Slight, Dr Maureen Taylor, and Dr Jo Wilkinson and for their support and motivational encouragement. There are no words I can offer to thank you all enough; you are inspirational people in your own right.

I would like to thank those colleagues within Cumbria Constabulary who have given to me their support, and funding, along with that of the College of Policing. The University of Cumbria Graduate School, Psychology and Policing departments are deserving of equal thanks. Equally, they have enabled this research to have real reach, impact, and availability. I also acknowledge my co-PhD students for their honest appraisal of my research and thinking. Thank you everyone!

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Chapter 1 – Motivations and Literature – the spectrum of 'vulnerability'

"...there are large numbers of VIWs, vulnerability is ranged along a spectrum, and needs and wishes need to be ascertained, not assumed"

(Burton et al., 2006. p.14).

Witnesses are an important part of the criminal justice system and their accounts are central to most prosecutions. However, the needs of witnesses are often assumed, and this is problematic for witnesses and courts. With the increasing development of practitioner-based research, this thesis grapples with a central problem: practitioner experiences of vulnerability amongst witnesses in criminal investigations and trials. In practice it has become increasingly unclear who is vulnerable, and who might require support; yet, in each case the Police are expected to identify this and correctly apply the legislation. It is vital to understand the spectrum on which Policing interacts with witnesses and the courts.

1.1 - Personal Motivation – approaching vulnerability and unfairness.

I have worked in policing for over a decade. I began as a member of civilian staff, and amongst other roles, I worked on the front counter of the Police Station. This opened my eyes to the often-devastating effect crime had on victims and witnesses. I have always been passionate about fairness and victims. I am employed as a Police Officer at the rank of Detective Sergeant and I have worked on many complex sexual, violent, and grievous crimes. Often these involve scared, intimidated, and traumatised victims and witnesses. Hearing their stories, seeing their injuries, witnessing them relive their trauma through interviewing, has provided me with an important, but troubled, insight.

Through my work in a complex, high demand, crime investigation department I have become more interested as to the way investigators construct vulnerability, most often around the victim. What interested me was why, despite some similarities, the investigator mind-set did not operate in an equal way for all

witnesses. Sometimes, even within the same case. For example: with a case of a serious sexual nature, the victim would always have their evidence visually recorded – enhancing their options for participation within any later criminal trial. However, a case of domestic abuse, with similar vulnerability themes, would often receive a different response, and video recording processes only used for cases with severe violence and trauma. Decisions are then often based not around the type of victim, the type of evidence, or any real and detailed assessment, but simply on the offence type. Who receives treatment as a vulnerable witness is often constructed by practitioners around the victim; in my view this is too narrow, and unclear. The employment of assessment toolkits is also often fragmented and often this leaves out discussions around suspects, and other witnesses who could nonetheless be vulnerable or intimidated. The effect of this is an approach to vulnerability not centred around the person, but on their role within an investigation, or the type of crime being investigated.

I would often see in practice that being defined as vulnerable, or intimidated, would mean nothing to the individuals involved. To the police organisation, they were a group of people who interacted most with criminal enterprise, statutory services, and were subjected to most referrals. Sometimes, without any real benefit to the individual. The problem of understanding vulnerable people is viewed by many of my colleagues as being very complex. Making it overly complex means that fewer people want to become involved or take time to understand what made the vulnerability so complex to begin with. I have seen the language used by investigators develop, describing vulnerable individuals as most at risk, requiring intensive resources, and often specialist capability. This seems to scare some officers from becoming involved, pushing this type of work into often resource scarce specialisms. This has turned vulnerability into something less manageable for most non-specialist investigators. Pushing vulnerability into silo type specialisms has resulted in isolated roles and training; despite wider observations that vulnerability themes were said to exist throughout many investigations, the problem was that investigators would fear the

situation to be so unique, beyond the scope of their personal skills. I always recall a uniform colleague remarking that they were not trained to speak with children at domestics, so did not engage with them. I could see that this term 'vulnerable' brought about disparity, fear, and in some cases unfairness. I saw it as subjecting individuals to largely subjective encounters.

As an investigator I encountered many different aspects of vulnerability. In my mind I grouped these into three main areas: 1) procedural vulnerability – that which arose from laws such as the YJCEA and Mental Health Act; 2) contextual vulnerability – arising from the needs of individuals seeking support from victim support or mental health services to deal with so called 'crime trauma'; 3) personal vulnerability – those for which language, ability and disability represented real personal challenges. When these three aspects of vulnerability interacted with policing, they become categorised and subject to processes, such as custody, detention, suspect interviewing, witness statements, and evidential processes. Vulnerable people may also interact with investigators as suspects one week, victims the next, and witnesses the week after. The complex nature of their experiences may challenge traditional images of a 'victim'. In some cases, I observed chaotic victims judged as offering inherently untruthful accounts, their lifestyle was seen reticent of personally neglectful behaviours, with police contact seen as being a normal part of this lifestyle. An example of this chaotic interplay between victim, witness, and suspect, is well-known within the Rotherham child sexual abuse investigation (Jay, 2014). The line between being a victim and contribution to criminality is blurred – the individual however is still vulnerable but often systems, laws and processes make this distinction opaque.

Vulnerability has been discussed more significantly within Policing over the past ten years, several definitions and themes emerge which will be discussed in the literature review. Consequently, investigative skills are often inconsistent and are confused by a lack of a clear vision. In some crime types I see that vulnerability was more easily identified, often because it was guided by law – victims of sexual

offences for example are accepted as being vulnerable. In other crimes this is not the case – only recently has research and strategies for victims of human trafficking made mainstream the acceptance of them as vulnerable. Burton et al. (2006) found that Special Measures (SM) – a mechanism for witness courtroom provisions – were applied unequally and in some cases, there was no assessment of the needs of witnesses. Previously, research may conclude that this is simply down to assessment. However, my wider concern is what we traditionally acknowledge as being traits of vulnerability are outdated, fragmented and ill-informed. Whilst vulnerability as a concept does not originate from SM legislation, it is the key milestone for changes in witness evidence provisions. The concept of delivering a witnesses' best evidence is often related in practice to simply gathering evidence using video recordings. This does not accurately cover all aspects of vulnerability and so reflects the way vulnerability is often conceptualised by different people in different ways (Smith & O'Mahony, 2018). That is to say that vulnerability generates different meanings for different people, services, and justice mechanisms; this risk creating unequal service offers, disparity and again inequality.

As I saw the law interact with VIW, I could see that mechanisms operated beneath the surface that meant varying interpretations through practice. These mechanisms had a large, binding, and sometimes discriminatory effect on witnesses, their evidence, and access to justice. I saw these mechanisms emerge within police casefiles, more often after being promoted to Detective Sergeant, where investigators would use subjective, government, or organisationally developed language as a broad brush to describe sometimes complex vulnerability. Terms such as 'extremely vulnerable', 'vulnerable adult' or 'child', 'suffering mental health', were used liberally. I believed these were often ill-conceived judgements and contribute to the risk in society around dealing with disability (Eriksson & Hummelvoll, 2012). The concept of risk society is used to *"describe the current societal development as characterised by increasing complexity and rapid change. A main feature of the risk society is that new risks, or*

uncertainties, often created by this societal development, emerge and influence the human situation" (p. 595 - Eriksson & Hummelvoll, 2012). I could also see that where vulnerability was identified, and frequent inaccuracies seen, this sometimes led to questions about a witnesses' credibility and the risk of uncertainty in using their evidence. Despite this, often measures were not taken to respond to the witness' verbal and communicative needs to mitigate against the risk to evidence. For example: having autism may mean communication which lacks detail on the semantics of feelings and emotions. This does not mean the individual would not be emotionally affected. Although, in later assessment of the evidence it might be seen that the lack of emotion suggested the witness was being untruthful, or the weight of the account was not enough, for the case to be progressed. I could not see that there was any simple answer to this, or that there was any clarity as to what being vulnerable really meant.

Nationally, in literature, I found vulnerability defined by crime types and driven by focus to those witness groups who attract most research, resources, and government attention. There are a plethora of risk assessment toolkits, checklists and frameworks which make vulnerability difficult to navigate (McLean & Ryan, 2018). Whist crimes traditionally associated with interpersonal trauma (e.g., sexual offences, domestic abuse) have attracted vulnerability narratives, there are emerging crime trends (e.g., human trafficking, child sexual abuse reporting) which have highlighted the requirement for more research on the composition of vulnerability (College of Policing, 2019). These crimes are seen as new investigative challenges; however, many possess the same fundamental concerns around assessment and the effects of underlying vulnerability mechanisms. Vulnerability is also sometimes described as a risk to evidence where a person does not have the ability to communicate (Smith & O'Mahony, 2018). This is true, but in policing I often feel this is misunderstood when crimes more traditionally associated with vulnerability are viewed as a reference point for all vulnerability.

Ellison (1999) suggests that SM only serve a limited number of vulnerable people. Intermediaries – those who support communication needs – are sometimes overlooked within the investigation toolkit (O'Mahony et al., 2011). The intermediary role is not applied equally to witnesses and defendants; presumably due to the separation of fundamental learning routines within police training; for example, learning that intermediaries are only important for witnesses and not suspects. The separation and inequality of intermediary support may also be underpinned by costs of appropriating intermediary services, a belief that the role of the lay appropriate adult in police custody settings somehow replaces the skills of the intermediary in communications with suspects, and a lack of knowledge about the role of the intermediary. However, there is still inherent reliance upon the ability to identify witnesses effectively from the outset (Hall, 2009). Whilst research evidence exists in respect of interviewing practices, courtroom questioning, and the benefits of intermediaries, there has been slow progress in research terms around working with practitioners. This represents a unique national challenge which can appear complicated with traditional police training, and styles of advocacy slow to change (Bowden et al., 2014; Smith & O'Mahony, 2018; Ellison, 1999). The overarching aims and objectives resulting from my experiences, and informing this thesis, are now discussed.

1.2 - The overarching aims and objectives

There are three inter-related studies forming this thesis: a pilot survey, deliberative inquiry, and semi-structured interviews. These are aimed to gather data from practitioners to explore their knowledge, use of processes surrounding vulnerability and recommend how these may be overcome. In short summary, there is a distinct need to examine Police Officer and Prosecutor responses to VIW's and inform practice with new research evidence. Smith and O'Mahony (2018) emphasise that vulnerability within the criminal justice system is often developed with reference to interviews and the risk that vulnerability possesses to evidence. There is a need to think much wider and examine what vulnerability means to criminal justice.

Psychological and legal research have typically operated in isolation (Smith & O'Mahony, 2018) along with investigative research, and this has not served vulnerable people well. Consistently there is evidence of a failure to identify VIW's (Burton et al., 2006; HMIC, 2013; Miller, 2012; Cooper & Roberts, 2005; Ellison, 1999; O'Mahony et al., 2011) and the police case file is rarely examined in sufficient detail as to decide the accuracy of any reported vulnerability (Lea & Lynn, 2012; HMIC & HMCPSI, 2017). Vulnerability research cannot therefore continue to exist where it is restricted to interviewing practices, specific crime types, or a person's role within an investigation.

This thesis will begin by constructing a rationale for the research through the existing academic literature, legislation, and policy. It then situates the methodology before reporting on the findings and contributions to knowledge. I hope that examining these areas will help to identify common investigative processes around vulnerability without a focus on interviewing or crime-type. I will also synthesise legal, psychological, and investigative literature to help make recommendations for the future direction of vulnerability research work and practice. As a Police Officer I aim to answer mostly to policing practices, whilst having an influence over wider justice and research cultures relating to vulnerability. Consequently, this thesis will also demonstrate clearly the challenges faced in implementing research amongst policing cultures, which can be informed by self-fulfilling constructions, previous case outcomes, and ill-informed senior decision makers (Trinder, 2008). The aims and objectives of this thesis are now tabled below with related chapters signposted.

Table 1

Overarching Aims and objectives of the three studies and related chapters

Overarching Aim	**Objectives**	**Chapter(s)**
1) Situate the researcher and the subject matter within the existing knowledge base.	a) Situate the practitioner within the research and their field of knowledge and experience with VIW's. b) Situate the research, methodology, epistemology, and ontology in relation to enabling a robust approach to understand the issues through research.	1, 2
	c) Use a combined evidence base from case-law, psychology, criminal justice, and inspection reports to inform the position in relation to vulnerability. d) Evaluate the problem of vulnerability and the criminal justice system concerning witnesses. e) Situate definitions surrounding vulnerability, witnesses, and the YJCEA.	1, 7
	f) Identify literature accuracy as a reflection of current practice across disciplines using study one – questionnaire with front-line policing and witness practitioners in relation to vulnerability issues.	3
	g) Examine the concept of vulnerability in all data to inform future work and recommendations. h) Draw together a summary of the results with contrast to previous findings, literature and theory including psychological concepts: mindlessness, fatigues etc.	3, 4, 5, 6, 7
2) Gather data from current practitioners to explore their knowledge and use of processes around vulnerability.	a) Understand how Police Officers process and define vulnerability concerning investigations, safeguarding and witnesses using a deliberative inquiry and interviewing to understand structures and sub-structures. b) Identify barriers to improving the system in relation to evidence-based activity around VIW's, including Police Officer training, and courtroom practices.	4, 5, 6
	c) Evaluate the legislative effect of the YJCEA on legal, policing, and auxiliary practitioners, using interviews and a deliberative inquiry. d) Use data from study one to generate discussion within deliberative inquiry and cross-reference findings with other practitioners to generate a significant depth to the inquiry.	4, 5
	e) Examine the role of the intermediary and auxiliary practitioners in assessing vulnerability.	4,5
3) Reporting the findings by synthesising practitioner experiences and the	a) Make investigative recommendations concerning the processing of VIW's to improve the submissions for special measures and provisions of the YJCEA b) Discuss literature in relation to reliability and credibility in respect of VIW's.	6, 7

scholarly knowledge base.	c) Understand the criminal casefile in relation to vulnerable witnesses and the effect of crime type. d) Examine the criminal court in relation to witnesses and intermediaries.	
	e) Detail findings in relation to improving assessment and communication of the needs of VIW's and vulnerable people offering a theoretical explanation where possible.	7
4) Make a contribution to knowledge through drawing clear conclusions and making recommendations for practitioners and researchers	a) Share learning with professional or college bodies (College of Policing; Bar Council; Home Office) including in publications to open-access journals.	6, 7
	b) Provide training to promote learning about vulnerability irrespective of crime type or organisation.	
	c) Expand and evolve vulnerability toolkits to promote the use of SM and promote an assessment-based approach.	
	d) Where possible engage professional steering groups, bodies, or committees in order to influence policy direction in relation to vulnerability and SM.	

1.3 – The Literature Review Structure

This remainder of this chapter situates the literature and the UK adversarial legal system in relation to vulnerable and intimidated witnesses (VIW). It is designed to respond to practitioners and is structured using the following headings: (1) Introducing the concept of vulnerability; (2) The Youth Justice and Criminal Evidence Act 1999; (3) Aiding communication with witnesses and the YJCEA; (4) The Criminal Case File and Witnesses; (5) Vulnerability, Training and the Evidence Based Approach. This situates the position for further study whilst providing a combined evidence base from case-law, psychology, criminal justice, and inspection reports. As an aim of this thesis is to provide practice recommendations, the literature review does not conform to a traditional theoretical perspective. Traditional literature narratives have isolated discussions around certain victim groups, crime-types, laws, and non-victim witnesses. Few reviews explore the challenges faced by defendants as witnesses in their own trials or consider together the disciplines of investigation and court process. If using a traditional narrative, the literature review would have fallen short in discussing the issues for VIW and would have become less recognisable to

practitioners. The chapter concludes by outlining the rationale for further study within the context of witnesses, vulnerability, and criminal investigation.

1.4 – Introducing vulnerability and the Criminal Justice System.

There is no internationally agreed definition of the word 'vulnerable' or 'vulnerability' regarding witnesses within the criminal justice system (Bull, 2010). There is concern that vulnerability is socially constructed to serve political and economic interests (Green, 2007). Vulnerability is so often cast into language to create the effect of seriousness, urgency, social-ill, risk, or a need to act (Gibbs, 2018). Using vulnerability correctly matters because *"individuals are entitled to access to justice, those who are vulnerable must not be excluded or marginalised and the courts have a duty to safeguard the welfare of children and vulnerable adults"* (Cooper et al., 2018, p.18). A wider use of vulnerability terminology creates the problem of over-inclusiveness and those most vulnerable become less visible. Initial assessments surrounding risk and vulnerability are often fragmented, taking place in time-pressured situations with influencing factors said to be equally complex and inconsistent (Robinson et al., 2016). Defining vulnerability is therefore problematic, with conflicting literature, and definitions isolated to disciplines such as psychology, law, and practice (Mclean & Ryan, 2018). This also provides different levels of vulnerability, worthiness and so has police resourcing implications. The police may exacerbate this through over-categorising, or over-emphasising, a vulnerability theme by making persistent misdirected referrals which result in no meaningful actions – a term we might define as referralism – (see also Ford et al., 2020 on police safeguarding referrals on vulnerability).

1.4.1 – Definitions and Vulnerability. Vulnerability is inherently dependent upon the lens in which the matter is viewed. Gudjonsson (2006) defines vulnerability as possessing *"psychological characteristics or mental state which render a witness prone, in certain circumstances, to providing information, which is inaccurate, unreliable or misleading"* (p. 68). Using this definition amongst VIW is inherently problematic, suggesting that such VIW's are susceptible to providing unreliable or misleading evidence. Within police interview settings, this definition is also problematic, suggesting to interviewers that vulnerable witnesses might be misleading interrupts with the aims of interviews concerning the gathering of free narratives in an unchallenging format. Within the discipline of policing vulnerability there are challenges in resourcing, skills, and processes; with an emphasis within policy that vulnerability presents risk (Herrington & Clifford, 2012; Stanford, 2012; Gibbs, 2018). Inferring risk has a detrimental effect upon populations by opening apparent problematic conceptual divides. This can mean that governmental, organisationally focused, and traditional policing framework often fail in addressing central issues around terminology, definition, and legislation (Bartkowiak-Theron & Asquith, 2012a).

In some Australian research a clustering approach to vulnerability – where vulnerable groups are viewed together as possessing similar characteristics – this can be beneficial to law enforcement and improve some relationships and interventions (Bartkowiak-Theron & Asquith, 2017a). Clustering deals with what may be defined as vulnerability traits, irrespective of crime type. There are frequently used terms such as: most vulnerable and least vulnerable (Mclean & Ryan, 2018). Presumably, in response to being unsatisfied to simply describe someone as being vulnerable, offering instead scaled degrees of vulnerability. This can operate too inclusively or discriminatory in some cases (Brown, 2017; Aihio et al., 2017). Whilst terms like 'most' and 'least' are indicative lenses, this fails to describe wider nuances when

discussing vulnerability or take a clustering approach (Gudjonsson, 2010; Bartkowiak-Theron & Asquith, 2012a).

One major body of knowledge concerning vulnerability concerns psychological explanations. Gudjonsson (2006) argues there are typically four types of psychological vulnerabilities relevant to the psychological or psychiatric evaluation of victims, witnesses, and suspects in criminal cases. These are labelled: **mental disorder** (i.e., mental illness, learning disabilities, and personality disorder), **abnormal mental state** (e.g., anxiety, mood disturbance, phobias, bereavement, intoxication, or withdrawal from drugs or alcohol), **intellectual functioning** (e.g., borderline IQ scores), **and personality** (e.g., suggestibility, compliance, and acquiescence). Killeas' (1990) discussion on biographical, environmental and cultural elements, and Gudjonsson's (2006) psychological vulnerability discussions, evaluate to a limited degree the risk and harm characteristics proposed in forensic interviewing. For example, the risk that a witnesses' evidence is poor due to improper police assessment may result in harm to that witness through a loss of justice and no punishment for the potential offender. So, whilst contributing to definitions on vulnerability they cannot be used in isolation to accurately respond to the problem of defining vulnerability around witnesses. Policing organisations are also criticised for becoming self-fulfilling – responding and defining vulnerability without respect to wider social, psychological work (Robinson et al., 2016). Police Officers are also found most at risk from developing negative stereotypes in relation people they interact with most (Howitt, 2018). For example, implying that a person is inherently vulnerable due to several vulnerable person reports held on police systems, therefore forgoing the need for a full assessment. These negative stereotypes may also mean that someone who is suspected of a crime, who later becomes a victim, is labelled as not believable in terms of their witness evidence.

Using psychological descriptions may not adequately capture vulnerability. The YJCEA was designed to deal with VIW, it provides its own definition and has two main gateways. These being: s.16

and s.17 respectively. For s.16 the act sets out that those under 18 years at the time of the offence are considered automatically eligible for SM and therefore vulnerable. Within s.16 (2) are also witnesses falling within the legislation by virtue of suffering from mental disorder (within the meaning of the Mental Health Act 1983) or as otherwise having a significant impairment of intelligence, social functioning, physical disability, or suffering from a physical disorder. These descriptions are not too dissimilar from psychological descriptions (Gudjonsson, 2006) but inherently contrasting to that of Killeas (1990) on risk, harm, and conditions of existence. Critically, definitions within the YJCEA ignore certain social and neurological factors, for example older adults with no specific impairment but suffering age related conditions such as reduced hearing ability, or those with non-neurotypical cognition, often referred as neurodiversity. In situating the YJCEA as being applicable for those with significant impairments, mental disorders, and obvious physical disability, this largely reduces the potential that Police Officers will consider witnesses as being vulnerable because their conditions are less visible, diagnosed, or obvious.

The YJCEA (s.16 (5)) requires SM be applied where necessary to improve the quality of the evidence, stipulating: *"the quality of a witness's evidence are to its quality in terms of completeness, coherence and accuracy"*. This proposes that SM are less about vulnerability, or vice versa, and more about evidential quality. Burton et al. (2006) found that one of the central difficulties within the application of SM is the process of identifying witnesses who may be eligible. Some witnesses are also specifically eligible (s.17 YJCEA), for example: offences involving weapons, adult complainants in sexual offences, and victims of modern slavery (Hoyano, 2010). These being in addition to: social, cultural, domestic and employment, religious or political views of the witness, or indeed if behaviour by the accused, their family, or associates, has intimidated the witness. This shows the development of vulnerability in accordance with specific circumstances, and crime type. Potentially, this means over-or under-categorisation even where the evidence the witness offers is whole in completeness, quality and accuracy which is part of the

landscape involved with defining vulnerability. Decisions about the completeness, coherence and accuracy of witness evidence usually begin within investigative decision making and continue in court practices – this is often related to the process of discovering truth-telling and detecting lies (Sprack, 2015). Within these areas of practice there could be wide variations in decision making informed by investigative mindlessness, practitioner responses to anxious witnesses, and beliefs about how witnesses should behave in given circumstances – for example: expecting a victim of a violent sexual offence to appear tearful and distraught despite suffering anxiety about being disbelieved.

Most vulnerability definitions do not begin to deal with the problems faced in labelling some witnesses, groups, and victims as vulnerable. Walklate (2011) describes how the labelling of victims can lead to negative and potentially damaging effects on people. In the YJCEA– for example: allowing all witnesses under the age of 18 to be automatically eligible for SM implies that they are inherently vulnerable. This type of labelling may be over-inclusive and not providing of a true focus. The direction of research around vulnerability sometimes uses social paradigm to influence vulnerable groups, this may also be described as socially acceptable vulnerability (Young, 1999; Walklate, 2011) – for example: men offend more than women; women are more vulnerable than men (Green, 2007). The optimum solution is for vulnerability to have meaning in both legal and societal settings (Perloff, 1983; Spencer, 2008).

A simple examination of codes of practice shows that some police forces (for example, Cumbria and Durham) adopt the Code of Practice for Victims of Crime vulnerability definition: *"a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence, or a close relative of a person or whose death was directly caused by a criminal offence"* (MOJ, 2015, p 53). Whilst other police forces adopt the College of Policing (2019) vulnerability definition: "*A person is vulnerable if, as a result of their situation or circumstances, they are unable to take care of or protect themselves or others from harm or exploitation."*. This shows the lack of

consistency around how vulnerability is operationalised (Bull, 2010; Cooper et al., 2018; Green, 2007; HMIC, 2015). It is also recognised that: *"the language of policing vulnerabilities is not universal, with some countries using other vernacular to describe the same individuals"* (p.45; Bartkowiak-Theron & Asquith, 2012). Within this thesis the YJCEA definition is used: s.16 – are under 18, or is suffering from a mental disorder, have a significant impairment of intelligence and social functioning; or have a physical disability or are suffering from a physical disorder, or (s.17) suffering from fear or distress in relation to testifying in the case. To conclude this section, the key definitions and literature are tabled alongside each other below.

Table 2

A summary table of the key vulnerability definitions and literature

Author(s)	Literature	Interpretation
Gudjonsson (2006) *Psychological Vulnerability*	Psychological characteristics or mental state which render a witness prone, in certain circumstances, to providing information, which is inaccurate, unreliable, or misleading	Used within psychology. Problematic to witnesses in proposing that vulnerability might be linked to inaccurate accounts or misleading testimony.
Killeas (1990) *Risk, harm, and conditions of existence.*	Vulnerability is as a condition of existence; shaped by physical, social, and situational components; with the existence of two measures: risk and harm.	Widely used in victimology literature. Helpful in understanding vulnerability holistically and according to social situations. Usefully proposes risk and harm.
Bartkowiak-Theron and Asquith (2017a) *Clustering*	Clustering approach to vulnerability – where vulnerable groups are viewed together as possessing similar characteristics.	Useful to operate between crime and incident types. Creates a shared and common view around vulnerability traits.
Mclean and Ryan (2018) *Most and Least vulnerable.*	Vulnerability is described frequently using terms such as: most vulnerable and least vulnerable.	Assists to determine the common way in which vulnerability is described. Shows scales of vulnerability (most/least). Unhelpful in creating over-or under-categorisation.
YJCEA (1999) *Key legislation* *for VIW and SM*	The act setting out key definitions in UK domestic law for VIW. That those under 18 years, or victims of certain crimes are considered automatically eligible for SM and therefore vulnerable. Separates witnesses falling within the legislation by virtue of	This legislation sets the tone for policing responses and creates two, almost equal, routes for victims to be defined as either vulnerable or intimidated. Unhelpful in determining some vulnerability by

	suffering from mental disorder (within the meaning of the Mental Health Act 1983) or as otherwise having a significant impairment of intelligence, social functioning, physical disability, or suffering from a physical disorder.	crime type, age and views some vulnerability on completeness and coherency of evidence. Allows for SM for VIW witnesses. Literature suggests problems interpreting eligibility.
MOJ (2015) *Code of practice* *for victims* *Definition*	A natural person who has suffered harm, including physical, mental, or emotional harm or economic loss which was directly caused by a criminal offence, or a close relative of a person or whose death was directly caused by a criminal offence.	Offers a wide categorisation to vulnerability but restricted to resulting from criminality or death. Lacks specific context to witnesses and does not include persons put at risk through trial criminal procedure processes.
College of Policing (2019) *Vulnerability Definition*	A person is vulnerable if, as a result of their situation or circumstances, they are unable to take care of or protect themselves or others from harm or exploitation.	Takes a person view of vulnerability, placing them and their situations as contributing to their vulnerability. Has potential for over-categorisation.

1.4.2 –Vulnerability, intimidation, and mindlessness. In most research there is an emphasis on vulnerability being measured using statistical frameworks and concerning populations who automatically become vulnerable because of an associated crime type, age or gender (Gibbs, 2018). This has led to vulnerability being defined by those groups who appear most commonly as victims (Walklate, 2011). With inconsistent definitions and terminology amongst professionals, beyond simply the Policing context, there becomes a space for individual subjectivity - mindlessness. Mindlessness is unexplored within VIW research, it is: *"characterized by an over reliance on categories and distinctions drawn in the past and in which the individual is context-dependent and, as such, is oblivious to novel (or simply alternative) aspects of the situation. Mindlessness is compared to more familiar concepts such as habit, functional fixedness, overlearning, and automatic (vs controlled) processing"* (Langer, 1992. p, 1). In most vulnerability-specific policy or legislation there is over-inclusive terminology and a preoccupation with definitions which sends an unclear message (Bartkowiak-Theron & Asquith, 2012; Gibbs, 2018).

There is therefore a danger of over prescribing vulnerability, and overlooking individual resilience (Brown, 2011). Instead of having an inclusive focus, the welfare and justice agencies become

overloaded, and who is most vulnerable becomes unclear and other factors such as fear and intimidation are lost. It is asserted that vulnerability is amplified through traditional criminal justice discourse, and it is necessary to manoeuvre away from policies and laws which simply provide a descriptive list of vulnerability themes (Bartkowiak-Theron & Asquith, 2012). The YJCEA operates in this descriptive way. Bartkowiak-Theron and Crehan (2012) highlight: *'not all mental illnesses, for instance, are such as to make a person vulnerable in their dealings with police and nor do specific ethnicities'* (p. 36). There is evidence that some victims do not believe they fit into stereotypical definitions; for example, domestic violence victims because they were not being physically harmed and do not consider fear and intimidation as warranting police involvement (Gibbs, 2018; Sherman et al., 2017). This may link back to discourse around the 'ideal victim' (Christie, 1986). Adopting a discourse around victims in terms of ideal, or being deserving, has been shown to be damaging to the social understanding of victims the same concerns may be applied to vulnerability and witnesses (Christie, 1986; Spalek, 2006; Gibbs, 2018). Therefore, careful management of how policy includes or engages people, within the context of vulnerability has an important effect. Any attempt to frame, define or reduce vulnerability to a specific term, crime type or ideal, can limit the overall assessment of who is vulnerable; this has been well recognised within victimology research (Walklate, 2004; Crawford et al., 1990). However, is largely absent from considerations around vulnerability and the YJCEA (1999).

Intimidation and fear have been described to suffer a similar lack of clarity as with vulnerability (Elias, 1993; Williams, 1999). Hale (1996) highlighted three main groups were viewed as having greater fear of crime, therefore more likely to feel intimidated: women, the elderly and those of lower financial means. Whilst accepted that these groups may inherently fear crime, this is not a conclusive measure of vulnerability and this does not make them inherently vulnerable as witnesses under the YJCEA (Green, 2007). Fyfe and Smith (2007) highlighting that most people do not want to become involved as witnesses,

citing fear and the potential for intimidation. A key quote which highlights the challenges can be found within the case of R v Davis and Ellis [2006] 2 Cr App R 32, CA where a Detective Constable stated:

> *"Most people opt not to co-operate and do not get involved. Doors are not opened, arranged meetings result in a witness not turning up, telephone messages go unanswered and messages left at home addresses and work, although discrete are ignored. This is not a problem that exists on an occasional basis. It is a problem that exists in practically every investigation in one way or another. Such problems exist on a daily basis. I have spoken to witnesses about a reluctance to give evidence. The common factor between all of them is fear".*

Intimidation is inherently part of the vulnerability relationship but is often least described (Maynard, 1994). Without an examination as to the overall effect that intimidation has on vulnerability, as an area it remains underdeveloped within the context of vulnerability. Some factors which may be attributed to a witness not being involved with criminal proceedings can include being unwilling, disengaged or fearful of police involvement (Fyfe & Smith, 2007). It therefore remains that vulnerability, with inherent links to fear and intimidation is worthy of study within itself and without attachment to any particular crime type, ideology, gender, race or ethnic group (Bartkowiak-Theron & Asquith, 2012; Walklate, 2011; Green, 2007). Much has already been said about the concept of vulnerability. To date one of the key changes to the law and police working practices has been the YJCEA.

1.5 - The Youth Justice and Criminal Evidence Act 1999.

The central principle within many adversarial justice systems is that of orality; where a witness gives an oral account of the events they have witnessed (Stone's Justices' Manual, 2015). Witnesses in criminal trials, both as victim and non-victims, are relied upon to provide evidence (Cook & Tattersall, 2010). It is usual for the witness to first orally relay their account to the police, and for it to be noted down

in the form of a written witness statement (Criminal Justice Act 1967, s.9; Magistrates Court Act 1980, ss.5A (3) (a) and 5B; Criminal Procedure Rules 2005, Rule 27.1). The YJCEA was designed, in part, to assist the witness in the orality task, placing between witnesses and the court a support mechanism to alleviate fear and enable some witnesses with psychological vulnerability, or those victim to sexual crimes and other serious offences, measures such as screens and video recorded evidence (Cook & Tattersall, 2010; Hoyle & Zedner, 2007; Durston, 2011). It does therefore not remove orally testified evidence but does change the way in which it is delivered into the court, and therefore changes the approach taken within the investigation.

The YJCEA was largely enacted on evidence from the Pigot Report (1989) and the 1999 Home Office report Speaking up for Justice (Baber, 1999). The proposed and enacted measures under the YJCEA were: screening from the defendant (s.23), evidence by live link (s.24), evidence given in private (s.25), removal of wigs and gowns (s.26), video recorded evidence in chief (s.27), video recorded cross-examination or re-examination (s.28), examination of witness through intermediary (s.29), and lastly, aids to communication (s.30; Dennis, 2013). It was reported in the 1999 House of Commons Green Paper that the implementation of SM was at odds with the principle of orality (Roberts & Zuckerman, 2010). A Home Office working group intended the outcome of the 1999 act was to deal with VIW, specifically redressing a balance between protecting the principles of a fair trial and ensuring that witnesses, particularly those in sexual cases, were not unduly disadvantaged (Baber, 1999). Police training will often cover the YJCEA as a subject within their focus on Achieving Best Evidence (ABE). The term ABE is also often used to describe a series of actions taken to assist victims and witnesses to give their best possible evidence, it was first described by the Home Office and used within their guidance as a language for guidance around victims and witnesses (Home Office, 2000; Macpherson, 2001). It where the terms ‘ABE interview’ originates; however, the guidance on achieving best evidence goes much further than to describe the best

practices of interviewing. The guidance extends into areas of supporting victims and witnesses complex needs and was more comprehensively overhauled as guidance in 2011 (Ministry of Justice, 2011).

The YJCEA enables witnesses to give evidence which may otherwise not be entered into the Criminal Court; either because the witness is too afraid, or they are unable to offer evidence without an intermediary or aids to communication (Macpherson, 2001). Through the YJCEA special measures (SM) are offered to witnesses on an individual basis and can be granted through an application to the court during a criminal trial (Durston, 2011). There are three main issues: (1) the identification process (Ellison, 1999; Burton et al., 2006; Charles, 2012); (2) communication channels (Burton et al., 2007; Criminal Justice Joint Inspectorate, 2009); (3) evidence gathering (MoJ, 2011; Denyer, 2011; Doak et al., 2012; O'Mahony, 2011; Charles, 2012). Having outlined them, they are now discussed in turn.

1.5.1 – The YJCEA and Identification. Dealing with the complexity of vulnerable witness identification is not a new dilemma (Edwards, 1989). There is a legal presumption that all witnesses are competent to give testimony unless information is presented to suggest they are not (YJCEA, s.53). The precise identification method is a key element to addressing the early investigative and later trial needs of witnesses who require SM, this often goes together with decisions about which evidence should be visually recorded (MoJ, 2011; O'Mahony et al., 2011). Witnesses will often be guided down a particular route depending on, for example, the availability of specially trained officers and the capacity to perform an individual assessment, and the cost to the investigating officers time (Nield et al., Haber & Haber, 1998; McDermott, 2013; MoJ, 2011; O'Mahony et al., 2011). This may lead to a decrease in the number of options available to witnesses under the YJCEA in any later trial stage (MOJ, 2011; Doak & McGourlay, 2012).

The original 1999 YJCEA defined vulnerability in terms of age, in being under 17 (amended to 18 by the Coroners and Justice Act (2009) s. 98), or the diminishment of evidential quality by reason of the

witness suffering from mental disorder (within the meaning of the Mental Health Act, 1983), a significant impairment of intelligence, low social functioning, physical disability, or suffering from a physical disorder (Roberts & Zuckerman, 2010). This makes the task of identifying eligible witnesses more complex, with the overriding assumption that everyone is competent (Brookoff et al., 1997; Williams & Goodwin-Chong, 2009). The s.53 position supports the principle that everyone is competent to give evidence (Roberts & Zuckerman, 2010) and unlike other areas of law there is an 'opt-in' element which must be fulfilled if the YJCEA is to be applied and witnesses have been correctly identified. Within the early research around the YJCEA police officers and social workers believed that the act would benefit a large number of potential witnesses; however, be hindered by the cost and time it may take for these witnesses to be identified (Nield et al., 2003).

Burton et al. (2006) assert: *"...there are large numbers of VIWs, vulnerability is ranged along a spectrum, and needs and wishes need to be ascertained, not assumed"* (p.14). There is a relationship between the methods used to gather evidence, the identification of VIW's, and later effects on court proceedings (Bull, 2010; Burton et al., 2006; O'Mahony et al., 2011). The case of R v Iqbal (Imran) & anr [2011] EWCA Crim 1348 does not sit alone in drawing attention to the issue of vulnerability identification. Research suggests that up to half of all witnesses who would benefit from some form of SM are not identified (Miller, 2012; HMIC 2013; Cooper & Roberts, 2005). This may be due to a lack of assessment, a lack of clarity around vulnerability, or simply not recognising relevant factors during evidence gathering. Surgenor (2012) argues that early identification and appropriate evidence gathering is 'best practice' when dealing with vulnerability because it steers later trial processes without which witnesses would not receive appropriate support.

1.5.2 – The YJCEA and misidentification. Whilst there is a concern around unidentified vulnerability more broadly, there is also a concern of misidentification within SM. In R v PR [2010] EWCA Crim 2741 it was recorded that one victim-witness of historic familial rape was permitted SM under the gateway of fear and distress of testifying (YJCE 1999, s.17). The s.17 gateway allows witnesses to receive SM on grounds of the social, cultural, ethnic origin, domestic and employment circumstance, religious beliefs, political opinions or behaviour towards the witness by the accused, their family, associates, or that they are the complainant in a 'sexual' case (Doak & McGourlay, 2012). Arguably, the s.17 gateway is less well used (Roberts & Zuckerman, 2010). In R v PR, it was not identified that the victim-witness also had a learning disability resulting in an inability to comprehend complex questions, highlighting a misidentification between so called intimidated witnesses (s.17 YJCEA) and vulnerable witnesses (s.16 YJCEA).

Unlike R v Iqbal the misidentification in R v PR centred on the specific dimension of the learning disability as an area of vulnerability. The R v Iqbal and R v PR cases are therefore critical in representing the two key problem areas in the SM debate; the first being initial identification of a witness who is vulnerable and therefore eligible under the 1999 act, and the second being the misidentification of witnesses between the two strands of the act (s.16 & s.17, YJCEA 1999). In contrast, where vulnerability and SM are correctly identified there is a positive impact on criminal proceedings concerning VIW's. This is seen in the case of an 81-year-old female who was repeatedly raped (Sed v R [2004] EWCA Crim 1294). Medical evidence corroborated the offence taking place and it was found during the initial stages that the victim was suffering from dementia. Specialist VRE was obtained, the SM direction was applicable under s16 ss.2 YJCEA – intellectual impairment.

The measures for intimidated witnesses also fall within s.17 YJCEA. In the case of R v Forster (Dennis) [2012] EWCA Crim 2178, fear and distress in testifying and intimidation from the accused's

family and associates were very prevalent factors in a case of sexual violence where the accused had threatened and manipulated witnesses throughout the case. There was concern that whilst the evidence in respect of the initial offence had been submitted, attention was not paid to a new intimidation offence. This is an area where intimidated witnesses are especially disadvantaged because this intimidation is often hidden, subtle and occurs between the stages of police investigation and the trial itself (Burton et al., 2006; CJJI, 2009; Cooper, 2003). This is clear in Van Colle and Another v Chief Constable of Hertfordshire police [2006] 3 All ER 963 where one witness was shot dead only days before giving evidence. It was later identified that the witness had suffered days of intimidation and feared giving evidence, despite this being raised no protective measures were put in place.

1.5.3 – The YJCEA and Intermediaries. One of the areas which has a significant impact for VIW is s.29, where an Intermediary can be present to assist a witness or the defendant in giving evidence, or in understanding the proceedings (O'Mahony et al., 2011). Intermediaries are agents of the court and their role is independent of either counsel, they are present to service the communication needs of whoever needs their support. Despite their importance, there is an underestimation of the prevalence of communication problems amongst VIW. In conjunction, an overestimation of competence is also observed, characterised by : assumptions that advocates, and in some cases investigators, know best, use ill-informed toolkits as an assessment frameworks, and do not consider intermediaries for defendants (O'Mahony, 2016; O'Mahony, 2013; Plotnikoff & Woolfson, 2007; Henderson, 2015). Under the YJCEA a judge may grant SM to assist with communication difficulties in respect of vulnerable defendants (R v Camberwell Green Youth Court [2005] UKHL 4; European Court of Human Rights in SC v UK [2004] ECHR 263, [2005] FCR 347 (ECtHR)).

In Northern Ireland an Intermediary is permitted for use during the police suspect interview stage, unlike their counterparts in England and Wales (O'Mahony, Milne & Grant, 2012). Shepherd (in press)

states that suspects and defendants are another category of witness (as are victims) with the similar psychological vulnerabilities. This may help investigators and the courts to move away from assessments based on roles within the investigation (victim, witness, and suspect). Hanna et al. (2010) highlights the Courts system of Israel, South Africa and Norway now employ the use of specialist interrogators to explain to the court the account of children as witnesses; this was done to avoid the risk of the child experiencing mental anguish as a result of examination. This role is similar to that of an Intermediary. However, the role of the intermediary is more central within the process, not simply an addition or an agent to promote ethical questioning or support communication.

Research indicates a positive outcome on juries where an intermediary is used: the communication and information elicited from the witness are said to become richer (Collins et al., 2017). The presence of Intermediaries has also improved perceptions of interviews with children, with no effect on perceptions of the child (Ridley et al., 2015). There is still a significant gap within the use of intermediaries and this is seen to have strong links with the ability to conduct thorough assessments and interviews with witnesses and suspects alike (Plotnikoff & Woolfson, 2007; Oxburgh et al., 2016) and therefore it follows when discussing vulnerability that the defendant is included. There is some evidence that those suffering from specific language impairment, even with adjustments, may not be able to communicate effectively. However, the intermediary role is a significant step to safeguard against poor advocacy procedures (O'Mahony, Milne & Grant, 2012).

1.6 – Aiding communication with witnesses and the YJCEA.

Most advocates believe that a physical presence by a witness during cross-examination is best (O'Mahony, 2011). Although, it is argued that the evidence in support of this is limited and anecdotal (Ellison, 1990). Cross-examination is designed to establish the truth and provide opportunities to observe demeanour and identify inconsistency (Roberts & Zuckerman, 2010). The YJCEA somewhat changed the

approach to traditional forms of investigation which had historically not provided options for video recording evidence from witnesses and created some conflict between traditional cross-examination and video recorded measures (McDermott, 2013; Ericson & Perlman, 2001; Hoyano, 2005; Hall, 2012). To illustrate; in the case of R v Iqbal (Imran) and another [2011] EWCA Crim 1348, the victim-witness (a person acting as a witness in a case where they are the victim) was not identified as being in need of specialist support during the initial police evidence gathering phase. Some months later the victim was required to give oral testimony in the Crown Court having provided a written statement to the police. The first Crown Court trial in 2010 was halted after the Judge became concerned about the victim's apparent learning and communication difficulties. It was submitted to a later Court that he had significant impairment of social functioning, intelligence, and communication. The victim therefore required screening from the defendant (YJCEA 1999, s.23) and an intermediary (YJCEA 1999, s.29) in order to effectively take part in the trial proceedings. This case demonstrates a central issue: the misidentification of witnesses who would benefit from SM and the preference to see and hear witnesses in courts despite their vulnerably.

The YJCEA does not specifically deal with court familiarisation. However, the law does highlight a difference between familiarisation and SM: "*There is a difference of substance between the process of familiarisation with the task of giving evidence coherently and the orchestration of evidence to be given. The second is objectionable and the first is not"* (R v Salisbury [2005] EWCA Crim 3107: para. 27). Court familiarisation and research around the questioning approach of advocates, in VIW examples, has received little attention, as most research focuses on procedures prior to cross-examination and around the way in which investigators gather evidence. Keane (2012) suggested counsel could benefit more from the specialist employment of linguists, or forensic interrogation specialists, to develop questioning techniques.

This, it is argued, would not only serve to benefit all witnesses, but would moreover serve to improve the overall structure for VIW.

Arguably, the YJCEA simply alters the course of cross-examination without first dealing with the core issue: the examination itself. In R v Barker and R v T [1998] 2 NZLR 257 (CA) it was concluded that part of the problem with cross-examination is that it:*"...is seen, wrongly, as an opportunity for advocacy in destroying prosecution witnesses in a zealous and partisan approach which leaves little margin for ethical practice; therefore affecting those who are vulnerable"* (para. 266). Many early government working groups focused on the central theme of police evidential approaches rather than court advocacy (Ellison, 1999). In comparison, the Dutch inquisitorial system of written dossiers of evidence, a process more akin to that of an inquiry, dealt with problems facing oral testimony - an advantage of this for witnesses is that it removes the need for oral examination entirely. Ellison (1999) argues that the accommodation approach to witnesses within the adversarial, through use of the YJCEA, does not favour witnesses and the process of giving evidence. Whilst significant numbers of witnesses (including sexual offence complainants) using SM found them helpful and would not otherwise have given evidence (Hamlyn et al., 2004; Burton et al., 2007), SM do not change the system of cross-examination. Pre-recording cross-examinations and evidence have long been recommended, particularly in cases involving children (Hall, 2009).

1.6.1 - The introduction of pre-recorded cross-examination. There is a lack of progressive reform which exists around cross-examination (Ellison, 1999; Hall, 2009 O'Mahony, 2016; O'Mahony, 2013). The addition of s.28 of the YJCEA is an attempt to fully implement the recommendations of the Pigot Report (1989) and *Speaking up for Justice* (Home Office, 1999). S.28 allows for the video recorded cross-examination or re-examination of witnesses. Unlike the documentary evidence called for by Ellison (1999), this measure physically removes the witness from the court whilst allowing the court to see them, and to observe their demeanour, during the examination process; the measure is however legislatively narrow. Hall (2009) argues that the application of s.28 is restricted because of concerns over the amount of time between the initial interview and any further cross-examination. Despite a ruling (R v Camberwell Green Youth Court [2005] 1 WLR 393) that the use of SM under the Act does not disadvantage a defendant's right to a fair trial, many advocates continue to resist the full implementation of s.28.

There is little empirical research into the use of pre-recorded cross-examination. It is asserted that pre-recorded cross-examination could be conducted well in advance of any trial taking place and where proper planning has been agreed and bringing distinct benefits to many VIW's (Bowden et al., 2014; McDonald & Tinsley, 2012). To illustrate: R v RL [2015] EWCA Crim 1215 is one which shows the benefits of using pre-recorded material for VIWs. The trial judge requested that questions be raised in advance of the s.28 cross-examination procedure. The victims in this case were children, the appellant was their mother, and the allegations concerned cruelty to children (s.29 YJCEA, 1999). Within the preliminary hearing counsel were reminded of the very young age of the victims involved and the procedures around the questioning of such witnesses. Some of the questions proposed for the witnesses were deemed to be unnecessary and an intermediary was also assigned to assist with the cross-examination. The position as set within R v JP [2014] EWCA Crim 2064 was relayed to the court: *"...It is now generally*

accepted that if justice is to be done to the vulnerable witness and also to the accused, a radical departure from the traditional style of advocacy will be necessary. Advocates must adapt to the witness, not the other way round…".

Notwithstanding the lack of empirical evidence surrounding s.28, the case of R v RL demonstrates what can be done if the rules and procedures are applied correctly to the pre-trial cross-examination of vulnerable witnesses. The procedures to gather evidence involved fourteen video interviews, an intermediary, and although not in force within that court, s.28 was considered, though not used. This case established a precedence in dealing with evidence from witnesses whose competence needs to be assessed and where an intermediary is required. In time further instances of case law in which s. 28, or SM, have been applied to appropriately and successfully will go some way to overcoming the aversion, scepticism, and resistance of legal practitioners (Hall, 2009; Cooper, 2018). It is noteworthy that it is over two decades since Ellison (2009) thoughts on these matters: change in attitudes is extremely slow (Cooper, 2018). The slow implementation of s.28 is largely due to resistance from the legal profession who argue that the removal of children from the court is achieved already within the SM (Henderson et al., 2012).

Henderson et al. (2012) draw together studies from New Zealand, Australia, and the United States. They point out that in most adversarial systems there has been little appetite to draw together the relationship between the initial giving of evidence to the police, and subsequent trial procedures. Instead many states seek to limit the time between evidence being initially collected and subsequent test in cross-examination. It appears that many courts will only use the procedure of pre-recording as a last resort, or where there is a critical need to expedite the procedure because of failing health. Such thinking endures despite evidence indicating that a major source of stress for children is the period between initial evidence gathering and the trial (Plotnikoff & Woolfson, 2009; Cooper, 2018). The disadvantages of s.28 are described as being that around the disclosure process with regards to material gathered in the case

(Henderson et al., 2012) and the continuity of counsel: where pre-trial examination was carried out by one Barrister with another taking the case over and having a different view.

Some clear evidence emerged from the piloting of s.28 within courts (Cooper, 2018). In summary there were three identified benefits: The first, the length of time before the child was called to take part in the cross-examination procedure. In the s.28 pilot this interval decreased by up to four months. Secondly, the duration of cross-examination of the child reduced by up to an hour, and in some cases this reduction was even greater. This reduction was partly down to better prior planning in examining witnesses, and the conduct of an effective Ground Rules Hearing prior to the examination taking place. The third observed benefit was that children were examined earlier in the day compared with those not in the pilot. The Lord Chief Justice's Report (2015) stated in respect of s.28: *"...judges unanimously commend it as greatly improving the administration of justice by reducing stress for the witnesses and encouraging early pleas of guilty. There is no doubt that national implementation will bring very significant benefits..."* Henderson and Lamb (2017) highlights the relatively recent implementation of s.28 means that there is limited material with which to form a wider review of the evidence. This remains an under-researched issue, in comparison the use of intermediaries and other investigative approaches (e.g. forensics, interviewing). There is then the issue of determining if a witness is to be relied upon and is seen as being credible.

1.6.2 – Reliability, Credibility and Witnesses. In some cases, the reliability and credibility of witnesses, and their previous convictions, current circumstances, and the way in which their evidence is gathered influences the weight of their evidence within a criminal trial. Factors taken into account when considering a prosecution include public interest, the sufficient admissible and complete nature of the evidence, and the reliability and credibility of witnesses (Wilson, 2003; Sprack, 2015; Doak & McGourlay, 2012; CPS, 2018). Reliability and credibility are relevant when considering witnesses and VIW; although, criticism has emerged where this takes place too early (Lea & Lynn, 2012) or is subjective and dependant on poor understandings of criminal law (Sprack, 2015; Doak & McGourlay, 2012). This is important in framing the debate around VIW; for example, it could affect the progression of some cases where it is viewed that a witness lacks credibility. It was identified within the Rotherham child sexual exploitation and abuse inquiry that the perceived reliability and credibility of witnesses was a feature and why some early cases were not pursued. This was largely due to the belief that these witnesses, who were usually VIW, were not reliable or credible (Jay, 2014, p74). The position on credibility is most accurately outlined in Onassis v Vergottis [1968] 2 Lloyds Rep 403 at p. 431:*"Credibility' involves wider problems than mere 'demeanour' which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be… [credibility is described] …All these problems compendiously are entailed when a Judge assesses the credibility of a witness; they are all part of one judicial process."*

Within an investigation the police are directed to search relevant medical, social, and school records to be served within a hearing as so-called third-party material, which may or may not support a view around a witnesses' credibility (Sprack, 2015). Whilst not specifically analysed within this review, there is an important consideration for witnesses around the principles of this disclosure within criminal proceedings; a matter overlooked within previous discussions around the lens of vulnerability and VIW.

A person may be inherently vulnerable due to some previous behaviour, and whilst making them vulnerable, it may also mean they are deemed not credible or reliable (R v Makanjuola [1995] 3 All ER 730, CA). Where these occasions are not explored, or are given undue weight, this can affect the cases overall progression within the Criminal Justice System (Sprack, 2015; Jay, 2014). This is largely unexplored within research. However, a discourse analysis of criminal case files revealed three dominant speech genres in police and Prosecution language: impartiality, credibility, and the "real" victim (Lea & Lynn, 2012).

1.7 – The Criminal Case File and Witnesses.

There are limited reports and research findings in relation to the quality of case file evidence presented between the police and the CPS, and access for researchers is usually denied for this sensitive material (Lea & Lynn, 2012). This is despite a number of reports that draw attention to considerable delays occasioned by: inadequate witness details, a lack of attention to witness vulnerability, failures to prepare witness evidence, and late submissions of disclosure material in criminal proceedings (Charles, 2005; CJJI, 2015; HMIC & HMCPSI, 2013; HMIC & HMCPSI, 2017; NAO, 2011; CJS, 2006). It is therefore relevant to discuss and examine this as a feature of the problems faced by VIW's. Criminal trial hearings are communicative events that are densely intertextually structured; in a trial hearing, written documents such as police records, statements made by suspects, witnesses and experts are extensively referred to. These are often quoted, paraphrased, summarized and re-contextualized (D'Hondt & Van der Houwen, 2014). A review of casefiles in five police Force areas found that there had been little improvement in the quality of case files since a previous National Audit Office (NAO, 2011) review. Two key elements of poor quality were: often inaccurate case summaries and incomplete witness assessments and ineffective case file task and action progression: these are found to delay trial proceedings and case progression throughout the CJS, and this can significantly affect VIW (Leveson, 2015).

In an analysis of 459 case files from across England and Wales, concerning a mixture of offences, 168 required a witness assessment for SM, but an assessment was found only to be completed in only 80 cases (CJJI, 2015); this significantly shows the lack of a consistent approach to assessment. In a further example, involving VIW's, the police correctly identified the vulnerability, but failed to implement SM to manage risk to witnesses, and the CPS correctly identified risk but took no action to manage it either (HMIC & HMCPSI, 2013; Leveson, 2015). In practical terms an assessment of a witness during an investigation could take various approaches, from simply an unrecorded conversation to a more formal assessment which is structured with certain headings; for example, around: attention span, social awareness, routines, likes & dislikes, disability. Critically, each police force could employ the use of a different assessment process, this could result in some being inaccurate and untested assessment methods being used in practice. Equally, investigators may decide that the assessment is simply not needed because the severity of the offence is only minor – unfortunately, these cases can sometimes result in missed opportunities if the offences become more serious than originally interpreted by the investigator. There may also be missed opportunities where investigations are passed between teams of investigators who loose context with important elements of the assessment process such as re-assessing a witness' needs if the investigation changes course; for example: an investigation commencing as an assault which leads to the discovery of material to support offences of coercive and controlling behaviour.

Cooper and Roberts (2005) point to the merits of placing an assessment of witness' needs at the commencement of the evidential process, and when the witness is first identified by the police, not when the assessment is required for the case file – this is too late. The police are largely criticised for a failure to communicate the vulnerability of witnesses from the outset within the case file (CJJI, 2015) and this is perhaps due to a lack of regard for assessment at the point of first contact with witnesses.

There is also an assumption that the police will correctly identify a case where the defendant is anticipated to enter a plea of either guilty or not guilty: a matter that fundamentally affects the requirement for witnesses to attend court, and the type of case file prepared. In many cases the incorrect determination of plea has a negative effect on case management and, in turn, witnesses (Leveson, 2015; CJJI, 2015). In a more recent review of the quality of case files (HMIC & HMCPSI, 2017), specifically in relation to Stalking and Harassment, it was found that in 112 case files reviewed, there were 51 cases (46 percent) for which a SM assessment was required, but that had not been completed. This is again a strong indication that the quality of case files has not improved despite previous findings; however, where measures have been applied at the point of charge, they were used in the first hearing and case preparation from the outset (NAO, 2011; CJJI, 2015). The practice of case file management has an effect, not just upon witnesses, but also on the way in which the case progresses. The Criminal Procedure Rules (CPR, 2005) were introduced in part to assist in the management of cases within the CJS. There are clear directions given in part 3 of the CPR that witnesses' needs should be actively managed, and needs identified at the earliest opportunity because this significantly impacts on case progress (Plowden, 2005). Literature shows that this early assessment does not take place in all necessary cases (Leveson, 2015; CJJI, 2015; HMIC & HMCPSI, 2017).

The case files examined within HMIC and HMCPSI (2013) CJJI (2015), and HMIC and HMCPSI (2017) are all cases where there has been a decision made to charge a suspect where the National File Standards (NFS) applies. Notably, pre- charge decision cases have not been subjected to the same scrutiny surrounding assessment approaches and standardised file process. It is emphasised that although developed jointly between police and the CPS, the NFS is seen by many Police Officers as being too burdensome and bureaucratic (Mackie et al., 1999). There has been a succession of changes to the way in which Police Officers are expected to prepare case files and these are largely motivated by cost (NAO,

2011; Mackie, 1999; CJS, 2006). Many of the early reports around case management focussed on the rights of the defendant (Mackie, 1999; CJS, 2006). This focus has been to the exclusion of attention to issues affecting witnesses which may have left out some of these important early assessment considerations. There is a distinct emphasis on the training approach for Police Officers and the building of an evidence-base to support the police to make a more comprehensive and earlier assessment approach.

1.8 – Vulnerability, Training, and the Evidence Based Approach.

In several publications there is a consistent theme for joint training between the police, CPS, Court staff and Witness Care in relation to the management, treatment, and assessment of witnesses (CJJI, 2012; HMIC& HMCPSI, 2013; IPCC, 2013). Research evaluating police training has faced methodological issues (Booth et al., 2017) meaning that the research has been of a poor quality and value when assessing the overall effectiveness of the training delivery. Viljoen et al. (2017) found that: *"limited evidence for the effectiveness of training programmes in improving knowledge and skills of police officers towards people with disabilities exists"* (p.1). Much of the current research focusses on the way in which a witness might be interviewed by the police or have their evidence scrutinised within the courts system (Bull, 2010; Cooper & Roberts, 2005; HMIC & HMCPSI, 2010; IPCC, 2014; Ragavan, 2013). In 2013 the College of Policing were advised to review police training: *"... so that police officers have a sound appreciation of what happens when cases proceed to court, and how evidence is presented and tested"* (HMIC & HMCPSI, 2013). To a large extent the Police still do not fully understand vulnerability assessment, court procedures and available support for VIW's (Smith & O'Mahony, 2018). However, research does not fully identify the environment in which police officers operate nor the way in which they are trained and gain knowledge.

police training often involves a silo approach to vulnerability legislation, and policy which is absent of a research informed foundation (Asquith et al., 2017; Stanford, 2012; Gibbs, 2018). Training manuals around vulnerability are often organisationally based and fail to operate effectively between

partnerships (Cooper et al., 2018). The common relationships between knowledge, knowing and embedding research into practitioner frameworks is complex; however, has been successful in health professions to a greater extent than in Policing (Williams & Glasby, 2010; Michael, 2014). Most police Officers are still unfamiliar with court processes, and most are reliant on e-learning with a distinct absence of evaluation as to the effectiveness of this training (CJJI, 2015; HMIC, 2015; Kebbell et al., 2007). Systems of law enforcement have traditionally relied upon experiential knowing; craft and tacit knowledge acquired over several years of experience doing the "day job" (Williams & Glasby, 2010; Heslop, 2006; Tong & Wood, 2011). The effect of this has been that much of the impact of research on police learning - and therefore everyday practice in applying the law - has been limited and isolated and absent of an evidence-base (Kebbell et al., 2007; CJJI, 2015; HMIC, 2015).

It is emphasised that policy-making communities often claim the idea of implementing evidence-based practices, when in reality this claim is merely a symptom of management attempting to address political ideology; the term evidence-aware is perhaps more accurate and realistic (Marston &d Watts, 2003; Nutley, et al., 2007; Sandra et al., 2007). Whilst *"laws and theories about people, their health and well-being, their illnesses and distress, their patterns of behaviour and relationships are particularly hard to achieve"* (Gomm & Davies, 2000. p.12). Some high-quality research, which has clear and unambiguous implications, fails to attract the necessary change; perhaps due to being aimed at incorrect audiences, specialisms, or because of the academic language used within findings (Michael, 2014; Trinder, 2008). This may explain why some research around VIW fails to create the change intended.

It is argued that in order to improve the communication of research there must first be an acceptance that practitioners may find it hard to read large volumes of research which has no specific meaning to them, or is communicated in an unfamiliar language (i.e. academic v policing: Needham et al., 2000; Nutley et al., 2007). It is also observed that *"professionals may not draw on research knowledge*

because of a reliance on other, less reliable indicators, being: primary training, prejudice and opinion, outcomes of previous cases, fads and fashions, advice from senior and non-senior colleague" (Trinder, 2008: pp. 3-4). There remains a substantial gap between the understanding of research and application in practice (Green & Gates, 2014). Often, where pockets of practitioner-led evidence-based practice emerges, it is not organisationally supported, or the issue is considered on a narrow basis and often experiences of embedding this do not get published, with the practitioner encouraged to return to the "day job" of Policing (Heslop & White, 2012; Green & Gates, 2014). The reaction by Policing following criticism is often to deny, make minor changes, or fail to create sustained change amongst many crime types (e.g. beyond victims of sexual offences or domestic violence). This reduces the sense of professional curiosity towards other types of vulnerability which may not be seen as organisationally important (for example frauds: Green & Gates, 2014; Brown, 2017, Walkgate, 2011, Trinder, 2008).

There is an equally inconsistent approach for advocates and lawyers concerning the approaches to questions during cross-examination with questioning principles lacking empirical research and a modest amount of empirical evidence on court cross-examination (Cooper et al., 2018; Booth et al., 2017). Studies are mostly with children, compared to a relatively well-developed body of empirical research relating to the questioning of vulnerable witnesses within investigative police interviews (Cooper et al., 2018). It could therefore be asserted that training and guidance is relatively untested and lacks supporting research in both police and advocate professions. There are multiple obstacles hurdles to professionalising the training and development of Police Officers, these include: (1) frequent leadership changes; (2) national employment and retention issues; (3) a lack of acceptance of the body of knowledge around Policing as a profession; (4) national professional standards being harder to achieve; (5) fears around losing direct control and the power to impose discipline; (6) loss of flexibility and a lack of conviction with regard to the benefits of Policing (Gates & Green, 2014; Paterson, 2011). Within this are layers of tradition and

stereotypical expectations about how the police will perform in relation to the management of society and crime (Booth et al., 2017; Brown, 2017; Walkgate, 2011).

As Police Officer training develops through the involvement of higher education institutions there is an increased potential, and likelihood, that this will increase the interaction between Policing and other professions such as law, sociology and psychology (Paterson, 2011; Tong & Wood, 2009). This may lead to a wider, more developed understanding, around the concept of vulnerability, the effect of labelling, and of poor assessment (Rosenfield, 1997; Eadens et al., 2016). The correct identification of vulnerability is wholly dependent upon practitioner's willingness and capacity to assess victims' and offenders' individual pathology or social membership (Asquith et al., 2016). With the enhancement of training it is a reasonable expectation that vulnerability will be identified providing there is a strong foundation of research, tested assessment frameworks and an understanding of the practitioner environment (Heslop & White, 2012; Green & Gates, 2014; Trinder, 2008; Nutley et al., 2007; Viljoen et al., 2017).

1.9 – Summary.

Vulnerability, as a narrative, has widespread implications for law enforcement (Bartkowiak-Theron & Asquith, 2012). The current study assumes that the term vulnerability, concerned with VIW, has lost its practical utility, and has become too over-inclusive with a few narrow preoccupations: case roles, crime type, and interviewing. The existing literature positions current knowledge into a number of framing issues:

(1) *Definitions on Vulnerability:* Vulnerability is problematic because of this multiplicity of denotative and connotative meanings and definitions, hence the difficulties experienced by police practitioners in putting the YJCEA into practical effect (Bartkowiak-Theron & Asquith, 2012) and vulnerability has been legally and socially constructed to serve political and economic interests (Green, 2007; Brown, 2017);

(2) *Identification of vulnerable people:* There are still a significant number of witnesses who are not identified as being in need of SM and assessment is fragmented (Cooper & Roberts, 2005; Burton et al., 2006; Charles, 2012; CJJI, 2009; Baber, 1999) and there are also concerns that the YJCEA does not extend sufficiently for defendants (Plotnikoff & Woolfson, 2007; O'Mahony, 2013; Kebbell et al., 2004);

(3) *The law and the YJCEA:* The YJCEA has done very little to change the way in which cross-examination in court is viewed, it is still seen as the panacea to getting to the truth as far as witnesses evidence is concerned (Keane, 2012; O'Mahony, 2010) and the evidence around pre-recorded cross-examination is limited and often intermediaries are missing from witness support provisions (Wheatcroft, 2017; Wheatcroft & Woods, 2010; Henderson, 2015) The effects of vulnerability upon reliability and credibility has received little attention and should be explored further amongst practitioners (Wilson, 2003).

(4) *Training and Communication:* There are clear gaps within the development of Police Officer training in relation to vulnerability, this restricts wider holistic learning and direction around vulnerability and practice-led research is limited (Aihio et al., 2017; Booth et al., 2017; Viljoen et al., 2017) specifically around the police case file.

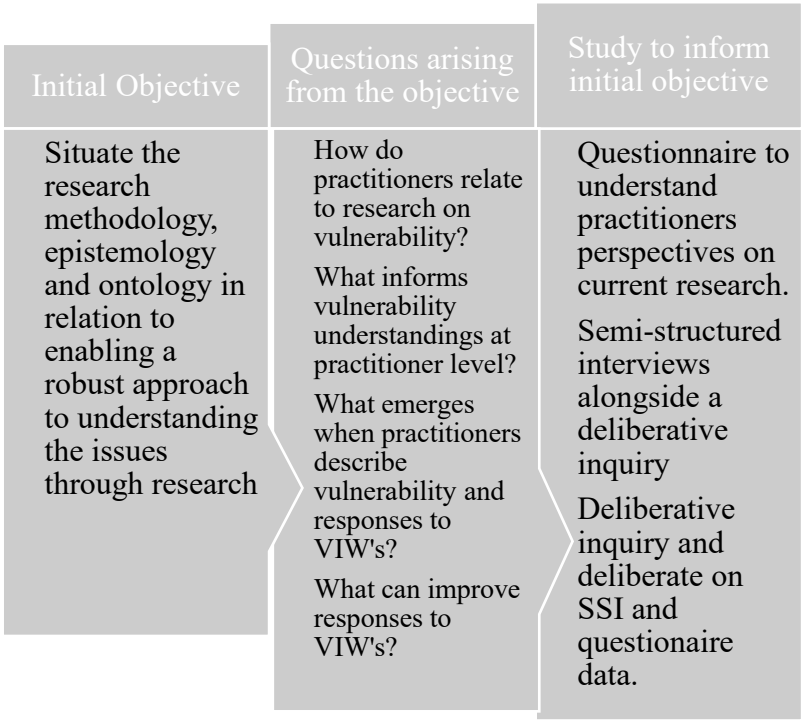
The central theme running throughout this research is around understanding vulnerability as a concept of human interaction between a vulnerable person and practitioners, assessing what factors influence decisions in VIW cases. Previous studies have not combined the use of deliberative inquiry and practitioner interviews, around the issue of vulnerability, and the way in which the YJCEA is operationalised in practice and at a practitioner level. The wider intention is that the findings are used to direct and inform future practice, policy making, laws and research. The next chapter positions the use of interviews and deliberative methods and describes the underpinning methodology.

Chapter 2 – Methodology

This chapter situates the research within an ontological, epistemological, and axiological context, and describes the three studies undertaken to respond to the research questions posed. Figure 1 presents the initial objective, questions arising from the research, and illustrates how these are explored within the three studies in the thesis.

Figure: 1

Illustration of how the methods align with the questions posed.



2.1 - Situating the research: ontology, epistemology, and axiology

The process of situating this research involves explaining the researcher's position relative to philosophical questions about: ontology (existence – what is reality?), epistemology (knowledge – how can I know reality?) and axiology (values – what are the researcher's values in relation to that reality?) (Bhaskar, 1978). The responses to these philosophical questions do not operate in isolation. There are several possible ways the responses can affect the way the research is conducted, which in turn has an

impact on the types of claims that can subsequently be made. The table below summarises in broad terms the four main positions typically observed in social sciences (Moon & Blackman, 2014; Tuli, 2010)

Table 3

Summary of typical positions within social sciences and relationship to studies

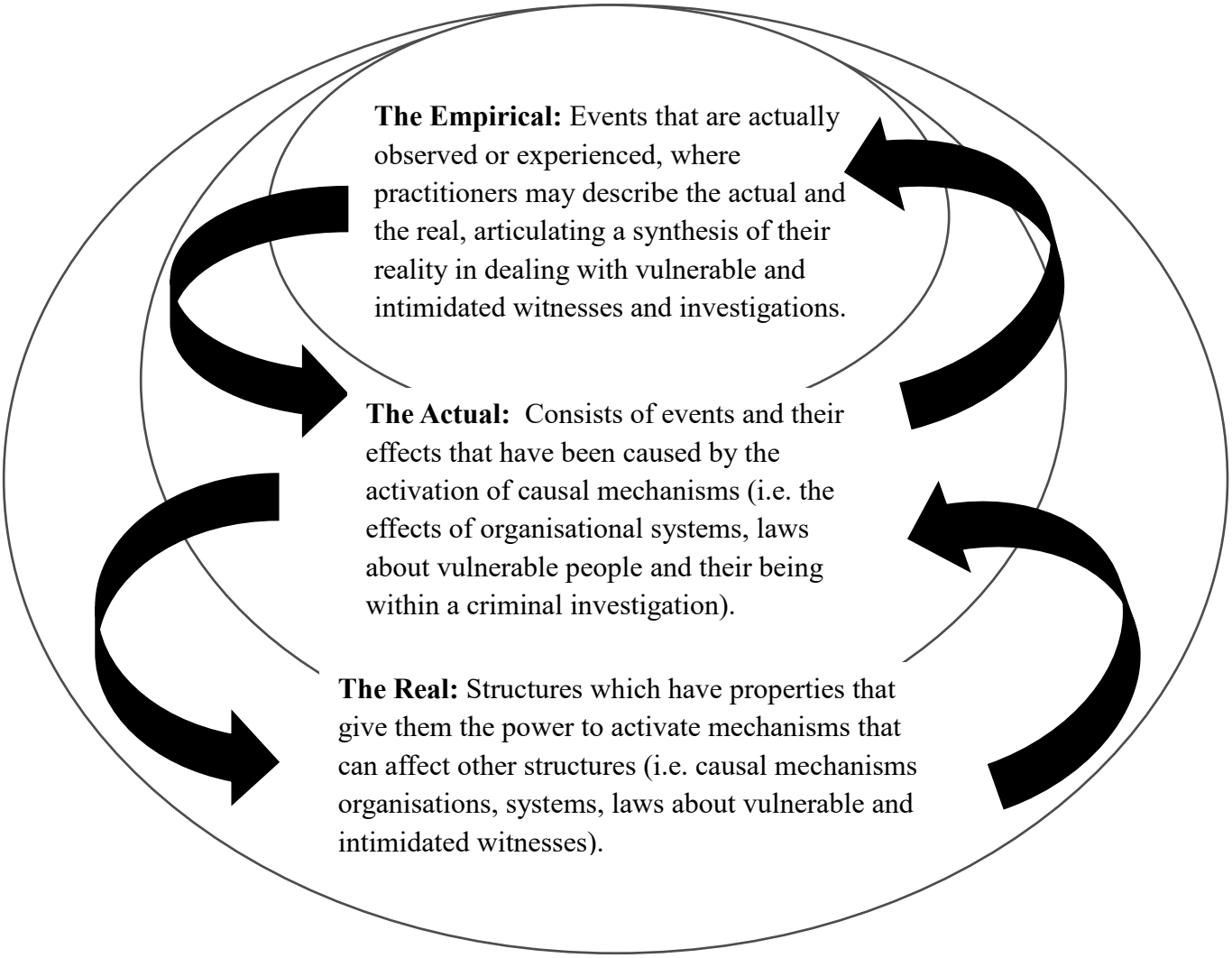
	Realist	Interpretivist	Critical Realist	Pragmatism
Ontology (nature of reality)	Objective, accessible and *"truths"* can be uncovered	Reality is constructed, subjective, comes in multiple *"truths"* and no one *truth* can be privileged over any other	Objective reality but not directly accessible, some *truths* should be privileged over others. Vulnerability is a social construct but the mechanisms that generate the state labelled vulnerability arise from systems that cannot be directly observed and how society responds to it is equally influenced by factors that are beyond direct observations.	Truth is negotiable and responsive to issues that emerge from social world.
Epistemology (nature of knowledge/what can be known)	Can be objectively observed, measured. Independently observed, unbiased. Researcher does not influence what is being researched.	Truth is constructed through the interaction between the researcher and the researched, they influence each other.	Vulnerability, as a label in the CJS, needs to be examined using different techniques and drawn from original perspectives from practitioners. Their Reality could in theory be uncovered but we have no direct access, everything is filtered through our frame of reference, researchers acknowledge that they impact on research hence the need for multiple observations from diverse perspectives.	Social reality is not static. The pragmatic approach is not to delve into ontology or epistemology but to accept that practical problems exist in the social world and our role is to find solutions, solutions that may be partial or in time need renegotiating.
Axiology (role of values)	The research process is objective and value free.	The researcher acknowledges their influence on the research through reflection and reflexivity	Emancipatory agenda, research seeks to privilege some accounts over others. This would include valuing research from one discipline of practice, participant group or stakeholder.	Problem solving agenda, solution focused research may be emancipatory depending on the issue under investigation.

The summary table briefly outlines the differences between the main positions, the first row asks whether the researcher assumes the existence of an objective reality that can be directly accessed and

therefore measured (Tuli, 2010). In the natural sciences the dominant ontological position is positivism which assumes the researcher can directly access the causal mechanisms that underpin the observations being made (Moon & Blackman, 2014). They can then manipulate the causal mechanisms to control and predict the phenomenon of interest (Tuli, 2010; Bhaskar, 1978). Social sciences research however does not always fit neatly within this worldview (Ho, 1994). Whilst there are three other positions summarised in the table. The position that most resonates with the researcher's is critical realism. Critical realism asserts that reality may be best conceived as stratified, comprising different levels (see figure 2 below), the real, the actual and the empirical (Bhaskar, 1978).

Figure 2

Reality stratified into three domains: empirical, actual, and real and applied to vulnerability.



Critical realists accept the researcher is unlikely to be able to gain direct access to the causes of human behaviour because of the complexity of the personal, social, cultural, and political worlds in which it happens. Moreover, when human beings observe other people's behaviour their ability to do so without influencing the behaviour of interest is questionable (Tuli, 2010; Bhaskar, 1978; Tuli, 2010). Critical realists argue that whilst there is an underpinning layer of reality that generates events in the world, we can never access these directly. This is because both our existing experience and knowledge interfere with the way we process the event and our presence as observer influences the event we are observing (Bhaskar, 1978).

2.2 - Ontology: Critical Realist philosophy applied to vulnerability research

In seeking to situate research exploring a concept such as vulnerability, it is necessary to recognise that it is not a tangible phenomenon. Rather, who is vulnerable from a criminal justice perspective is dependent upon the judgement of the individual making the decision and the context in which the decision is being made. Vulnerability is therefore a social construct and so is difficult to measure and assess. The assessment process is the main challenge of the research because whilst the socially constructed nature of vulnerability makes it negotiable and open to interpretation, the act of categorising an individual as vulnerable has palpable implications for them. A critical realist ontology would posit that there are underlying causal mechanisms that produce vulnerability, but these mechanisms cannot be directly observed. In the absence of the ability to make direct observations the critical realist researcher seeks to explore the problem of interest from a variety of perspectives and with participants whose experience of the problem differs. Gathering this range of data about the problem enables the researcher to *abduct* from the analysis a series of tentative propositions about the nature of the underlying reality. Abduction is defined by Ho (1994) as the stage of reasoning in research where *"the goal is to explore the data, find out a pattern, and suggest a plausible hypothesis"* (p.1).

The tentative nature of these propositions means that the purpose of critical realist research is not to make universal truth claims from their research findings, but rather to suggest the conditions under which a phenomenon may be likely to occur. In summary, ontologically the critical realism position posits the possible existence of causal mechanisms (in line with traditional thinking) but simultaneously acknowledges that any direct access to deep generative structures would be tentative, because access is necessarily mediated by our interpretation of what we observe (Tuli, 2010; Bhaskar, 1978; Tuli, 2010). It is the scope for interpretation and the application of cultural tools when exploring a problem that limits the claims we can make; this leads to the rejection of cause and effect claims within critical realist work.

2.3 – Epistemology; gaining knowledge and understanding around vulnerability.

Epistemology – broadly speaking a theory of knowledge – is proposed in this study to have been socially constructed (Isaksen, 2016). To understand a problem, such as how to respond to VIW's, a position of knowledge must be justified. In relation to this study it is proposed that practitioner's knowledge has been constructed through formal training, on-the job learning, and is also generated from practical experiences of dealing with VIW's and vulnerable people. This is relativist: proposing that knowledge is valid relative to a specific context, society, and culture or individual. This recognition that interpretation and culture mediate our understanding of the world means that how we can know (epistemology) is situated within a socially constructed domain (Burr, 2003). The constructed nature therefore of vulnerability, and in turn VIW's, means it may be understood in many ways. However, where CR differs from a broad social interpretivist ontology, is that whilst it acknowledges the various possible constructions of a phenomenon it actively seeks to privilege one/some account/s over others (Willig, 2001). This study is in line with a critical realism ontology and an interpretivist epistemology

because it does seek to take a political and moral position, arguing that VIW's treatment and wellbeing needs to be given priority.

Vulnerability has not previously been explored through a critical realism lens. Vulnerability has typically been constructed through either political, organisational, or legislative narratives. Using critical realism to explore different views has the potential to enhance our understanding of vulnerability by bringing together knowledge of laws, policy, psychology, and literature surrounding vulnerable populations. A significant body of research has worked with vulnerable people, but few studies focus on what is meant by vulnerability, particularly in the context of investigation, or beyond the preoccupation of some singular crime type (e.g. children who have been sexually exploited; Bull, 2010; Burton et al., 2006; Bartkowiak-Theron & Asquith, 2012a; Smith & O'Mahony, 2018; Walklate, 2011). Police investigation is part of a justice system, for justice to be served, a consensus of what vulnerability means and how it is managed and applied is critical. In essence, if vulnerability has the potential to influence those who dispense justice, it is perhaps important that vulnerability is understood, assessed, and responded to in an equitable and consistent way. To understand vulnerability, exploring the inter-relationships between power, control, personal and social influences necessarily involves viewing the problem from many and varied angles across a range of stakeholders. Critical realism actively encourages this approach (Bhaskar, 1978). Within this research the objective is to understand how vulnerability is being constructed in practice and to challenge the over simplistic criticisms that dominate, for example, professionals simply fail to identify vulnerable people. Given that critical realism research often has an emancipatory agenda it is necessary to consider axiology - what are the researcher's values in relation to the reality being explored? Moreover, the dual role of the researcher (police officer and researcher) make acknowledging the researcher's values and experience particularly important. Through a CR lens, the practitioner's knowledge is arguably socially constructed and may

operate between truth and belief. For example: for some it may be enough to believe that SM applications operate ineffectively, whilst others may need to see the impacts on witnesses to believe that it is true. In order to situate this research robustly and inform future practice direction the epistemology must demonstrate middle ground between truth and belief. For this reason, the methods of semi-structure interviews and deliberative inquiry operate to inform and test the beliefs proposed, this is shown in figure 1.

Knowledge mechanisms only exist because people reproduce and sometimes transform them (Lawson, 1998). Knowledge about VIW's is informed by psychology, often of interviewing, and court practices – often operating in isolation of each other (Smith & O'Mahony, 2018). It is proposed that Policing knowledge on the issue of VIW operates somewhere between interviewing practice, courts, and the law which often offers special attention to vulnerable groups, such as sexual assault victims. A view of the potential barriers and problems may arise from misdirected policy, social meaning, or research that may influence the overall direction of knowledge about VIW's amongst practitioners. Positioning the epistemology within critical realism embraces epistemic relativism – the idea that there are many ways of knowing and achieving a knowledge of something (Bhaskar, 2009). A position where the researcher may also analyse the social structures which operate in this research around VIWs (Danermark et al., 2002).

Vulnerability may be conceptualised and constructed to operate beyond simple definitions, political ideology, and meanings based on an organisational need that determine the conceptual and practical parameters. Practitioners share common values around vulnerability, often seeing a combination of factors influencing decision making. This moves well beyond knowledge of definitions and politicised stereotyping. An appropriate way to access this is through a participatory critical paradigm, where the researcher directs the inquiry in a particular way in order to give voice to those who

may be described as experts by experience (Lawson, 1998; Isaksen, 2016; Reason & Bradbury, 2008). The approach of combining realism and enquiry, along with emancipatory aims, has foundations of empowering advocacy research which arises from critiques, such as those of Bhaskar (1978). Critical Realism allows the researcher to be linked with the research and draw on their own sense of being. Observing language, culture and normality whilst generating knowledge (Reason & Bradbury, 2008; Humphries et al., 1999; Barton, 1998; Wilson & McCormack, 2006). This approach has the potential to generate richer data than that elicited from research adopting positivist methodology.

Within this thesis, action refers to the generation of communicative knowledge (Kemmis, 2001). The intended use of critical realism is the understanding of multiple entities, including a view of the system, which can alter the way the participants view the construct of interest (Reason, 1988; Lewin, 1949). The method of inquiry described as action research and the problems faced around defining vulnerability (see section 1.2), invites this philosophical approach. This goes beyond mere knowledge or the construction of a consensus definition. Patterson and Williams (1998) proposed that epistemology is justified and informed by axiology and ontology. Table 4 below shows how epistemology might be understood now that ontology has been described alongside methodology. Critical realists suggest that social research, based on human experiences, has much to offer the world and the presentation of results can combine values of normal data analysis (Castro, 2002). A critical realist also denies that data can speak for itself, nor will it speak outside of a theoretical framework applied, so needs explanation and interpretation (Lipscomb, 2009). The notes and references produced during the data collection and coding are therefore relevant and are described within the results chapters from each of the three studies which have separate data analysis sections. Explaining this within the presentation of data alongside key practitioner responses provides context and further meaning to the methods used and applied across each of the studies (Braun & Clarke, 2006; Boyatzis, 1998).

Table 4

Epistemology, ontology, and axiology to describe relationship to method selection.

<table>
<tr><td colspan="3">→</td><td>Methodology</td></tr>
<tr><td rowspan="2">Epistemology – Relativist: knowledge is valid relative to a specific context, society, and culture or individual.</td><td>VIW knowledge is constructed through formal training, on-the job learning, generated from practical experiences.</td><td>Knowledge about VIW’s is informed by psychology, often of interviewing, and court practices – often operating in isolation of each other.</td><td rowspan="5">Approach the problem using a combination of methods to assess the problem:
1) Survey to understand practitioner responses to research and knowledge
2) Interviews to gain individual depth and grant access to a wide range of professionals
3) Carry out a Deliberative Inquiry. To deliberate over complexity and data from interviews and survey. Gaining comprehensive understanding.
Participants drawn from: Police; Lawyers; Intermediaries; auxiliary support to see how vulnerability is constructed and VIW’s responded.</td></tr>
<tr><td>Embrace epistemic relativism – the idea that there are many ways of knowing and achieving a knowledge of something.</td><td>An appropriate way to access this is through participatory research and critical paradigm. Combine truth and belief.</td></tr>
<tr><td rowspan="2">Ontology –
Realist: what can be said to exist and how can this be explored.</td><td>VIW’s which have been constructed using political, policy, legal and practical lenses.</td><td>Research objective to understand why in practice VIW’s SM applications are made.</td></tr>
<tr><td>Practitioners exist and construct vulnerability terms, eliciting their own real-world experiences.</td><td>Challenge over simplistic criticisms such as: professionals simply fail to identify vulnerable people</td></tr>
<tr><td rowspan="2">Axiology –
Research aims and values to the researcher.</td><td>VIW’s and vulnerable people are let down by fads; fashions; organisational shifts.</td><td>Researcher is part of the system, sees its context and can promote improved practice.</td></tr>
<tr><td>Inform vulnerability research to improve the interactions between law enforcement and communities</td><td>Increase the use and tender of SM and their associated knowledge around vulnerable people</td></tr>
</table>

2.4 – Axiology: the researchers aim of vulnerability research.

Through my professional experiences and observations, I have become uncomfortable with the way VIW's are managed and I aim to improve responses to VIW's. I have become used to dealing with VIW's, their evidence, and vulnerability. Vulnerability is often said to have great organisational importance and must feature within an analysis of any case. However, I often see relevant detail is overlooked and simplistic observations emerge informed by ill-founded traditions and a preoccupation with some seemingly new or emerging crime trend. I propose that when posited against traditional approaches to obtaining evidence, for example using written statements, the process becomes transactional and the quality is limited. I have been involved within the Policing profession, and more latterly research, for almost a decade. Within that time, I have seen the development of practice around VIW has become more embedded within the Policing community. However, there is seemingly a legacy approach of simply seeing SM as extensively ideal to achieving best evidence. In most cases I see this is isolated to a handful of crime types. There are inherent challenges within the conceptualisation, and situation of research and philosophical ideas within Policing around the area of vulnerability. These include: (1) views held by management; (2) the understanding of vulnerability by frontline practitioners; (3) alienation of practice by so-called high-level research (Reason, 1988). This high-level research can be inaccessible for police officers and practitioners who seek to understand vulnerability in more practical terms.

I often see that practitioners have the desire to adhere to pragmatic approaches when responding to VIW, this often leaves the policing approach limited on detailed assessments and understandings. Some witness policies are heavily detailed, views about witnesses therefore emerge indicating that responses to VIW's should be isolated to specialist departments. Attempts to solve the problem of initial responses to VIW are often done using localised checklists or simplistic case-management; this does not

address more complex witness issues or help develop investigative approaches to VIW (Laverty, 2003). Some witnesses are therefore categorised as vulnerable, intimidated, or neither whilst other witnesses receive a better, or worse, service dependent upon the perception of how their vulnerability is categorised. In some cases, the pressure of political or organisational importance overrides the central premise in simply applying resources justly and with fairness. Academia itself imposes constructions of vulnerability which are failing to a relationship to practice; these fall short because of a failed appreciation of 'the system' in which practitioners operate.

Within recent years this construction has operated in relation to domestic abuse, modern slavery, and sexual offences. This has developed the meaning that witnesses within these situations are inherently vulnerable, therefore forgoing the need for detailed assessment. This approach has led to the increase of resources afforded to these crime types. However, in my experience a decrease in quality of the approach. Other crime, such as acquisitive crime, or financial crime for example, has become less recognisable within policing responses as involving vulnerability demands. This also led to an increase in policy within these more popular areas. I refer to this as the 'shifting sand' or 'Emperor's new clothing'. This style of decision-making helps legitimises the rationalisation of resources, ignoring broader social contexts and informed assessment practices. This forms a large driving force for this research and an inherent value for the researcher to explore and understand using research. However, adopting this position requires me to look beyond the organisation, its practices and those simply proposed by new research around interviewing practices, SM, or courtroom advocacy.

2.2.1 – Being on the inside looking out, and outside looking in. The purpose of this section is to describe further the position of the researcher. Practitioners who conduct research are described as "pracademic"; those who develop their own understandings through research whilst practicing within the discipline themselves (Huey & Mitchell, 2016). The researcher is a pracademic Detective Sergeant –

to all intent and purpose an "insider" (Dwyer & Buckle, 2009; p. 56). This position has distinct advantages because the researcher can engage with and relate to participants with a shared and common understanding of language and organisational structures (Adler & Adler, 1987). However, within this thesis the researcher is not simply engaged with Detectives, or police personnel more broadly. Participants are also drawn from the Courts and auxiliary roles supporting VIW's. There remains a position of power within these relationships and it becomes increasingly important, when describing methodology, to understand the researcher context and identity (Dwyer & Buckle, 2009). Muhammed et al. (2015) emphasise that by describing this position it helps create value in the research. Equally, in choosing a mixed methods approach (survey, semi-structured interviews, deliberative inquiry) the problem can be understood from different perspectives.

I wanted to provide practitioners the opportunity to mobilise their experiences in relation to VIW whilst reflecting on other data within the study. Based on the principles of action research the participants, as stakeholders, were not involved in the design of the method - this being a required element to fully claim the use of action research (Reason, 1988). However, the principles can be adopted in order that the research becomes action orientated with the researcher as the "insider" driving forward the study (Reason & Bradbury, 2001). I assessed the possible risks encountered with being an "insider" to include: (1) participants assume the knowledge of the researcher equates to their own; (2) the researcher fails to be objective and delve deeper into more complex areas; (3) the participants avoid sensitive areas because of concerns around anonymity; (4) the participants cannot fully decline participation due to unreasonable balances in power (Dwyer & Buckle, 2009; Mohammed et al., 2015). These considerations are explored within Reason (1988) around community-based action research projects. A strategy to combat these potential limitations include well managed group discussions that remain mindful of the above possibilities. A clear explanation was provided in the participant sheet, and

interviews and deliberative discussions were recorded to assist in sense making of data between sessions and interviews. This is also an important element to bringing about a practical outcome from the research which was a key aim – to improve the experiences of VIW.

Greene (2014) describes further the advantages of insider positions within research, this includes: knowledge of the systems and cultures; a working relationship with potential participants; and potential knowledge on the impacts that research may have. Whilst these advantages are often associated with ethnographic studies, the relationship is not restricted. One of the potential limitations is the research bias about interpreting any findings. To deal with the position of researcher bias, Greene (2014) offers reflexivity as the cornerstone for interactions between participants and the researcher. Reflexivity offers reflective engagement activities such as: writing and reviewing encounters with participants, reviewing recorded interviews, and remaining conscientious throughout. During the research phases I would activity ensure the use of open and non-leading questions and parity concerning the status attached to findings from earlier in the research. In practice this also concerned levelling focus around some of the early, less obvious, themes, such as: the relationships between the types of crimes participants were describing and those which I traditionally acknowledged as offering vulnerable witnesses. Choosing thematic analysis, as an analytic tool, offered an additional level of reflexivity. The reflective elements are also part of the dialect research cycle (Rowan, 1981) which offers *thinking* and *making sense* as being an integral part an insider researcher (see Figure 3, positioned in section 2.5 below). Explaining the insider position in this way attempts to deal with the considerations encountered with this type of research.

To critique the values underpinning the concept of something, to which the researcher is an integral part, brings new challenges to examine problems in a more critical way. I believe that people have agency to promote change only where they able to examine the problem from different

perspectives. My position as a researcher was fundamentally to promote practitioner descriptions of the challenges faced by VIW's. Undeniably, the concept of law enforcement is to uphold values and equality. Often, where these concepts are not achieved, the reaction is to suppress agency, reacting with a view that the system created this problem, and that the problem is too complex to interpret, and no new knowledge will ever originate from a different examination of it. In this research agency refers to the capacity for human beings to make choices and to impose those choices on the world (Rowan, 1981). The art therefore of the insider and outsider relationship is as much about agency as it is in attempting to address change from within. Understanding this insider position may also contribute to an understanding of the lived reality of the participants within this study.

2.5 – Positioning Critical Realism within this Participatory Research.

Critical realism was developed during the 1970's as part of a movement working towards an agreed view that knowledge may be influenced by underlying structures. One major advantage for participants and researchers of adopting this position is the depth of the relationship between emancipation, knowing, being, empowerment and the experience of being involved with research (Habermas, 1987; Outhwaite, 1987; Gustavsen, et al., 2008; Fay, 1987; Archer et al., 1998). This research is underpinned by a critical realism philosophy which adopts a participatory approach to inquiry and is therefore well placed to investigate an area like vulnerability. In this research the purpose and role of critical realism is defined as:

> *"….A participatory, democratic process concerned with developing practical knowing in the pursuit of worthwhile human purposes, grounded in a participatory world view…bring[ing] together action and reflection, theory and practice, in participation with others, in the pursuit of practical solutions to issues of pressing concern to people…"* (Reason & Bradbury 2001, p.1).

In order to approach the underlying structures, the methods used to collect data in this thesis concentrated on three approaches: an online open-ended questionnaire, a deliberative inquiry, and interviews. The objective of the questionnaire being to approach the experiences of practitioners around current practice and draw out potential areas for further research and exploration in a deliberative inquiry. A deliberative inquiry involves two or more people researching a topic through their own experience of it, using cycles to move between their experiences, reflecting on the topic together (Heron, 1996). This is more than simply gathering data through a focus group, or interview, as the method involves the generation of knowledge by groups of participants resulting in some form of action (Reason, 1988). This could be a sense of developed understanding amongst the participants – referred in many texts as co-researchers or a stable base for activism on the part of participants.

2.6- The three triangulated studies of this research.

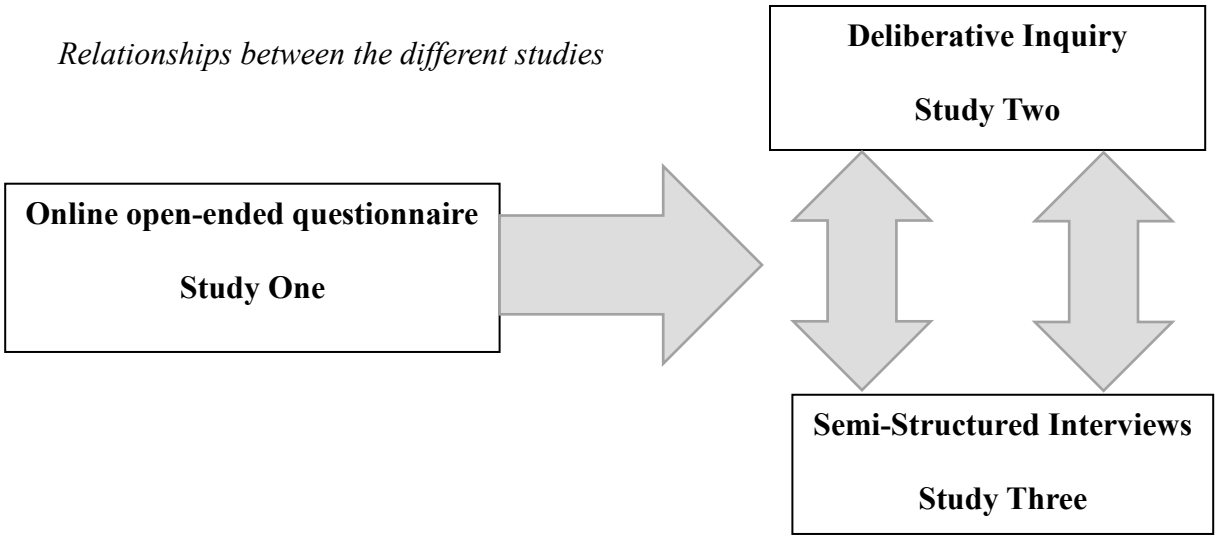
It is necessary within research to triangulate methods in order to provide rich and well-informed evidence (Denzin, 1978) using: a questionnaire, interviews and deliberative inquiry. Within this overall study of vulnerability, the methods triangulation involves checking between the findings within the different studies, to bring original conclusions supported by clear data. Broadly, these three studies seek to scope, engage, and generate in-depth data. Triangulation approaches typically involve data drawn from different sources, at different times, or from different people. The intention of approaching the issue in this way was to make the findings clear, and more comprehensive, whilst being well matched to critical realism positions, therefore increasing the credibility of this research (Patton, 1999; Denzin, 1978).

To describe simply, this research first employs an online questionnaire which feeds into a Deliberative Inquiry and interviews. This design maximises the potential access to the research for the intended participant groups which. Deliberative inquiry normally takes the form of an open discussion

between participants facilitated by a researcher and actions falling from this can include a new direction for knowledge gained from shared understanding (Heron, 1996; Reason, 1988). This combination with interviewing is important to vulnerability, and in turn VIW's, to draw out influences, cultures and barriers to SM application using different searches for the truth. Using a deliberative inquiry approach alone creates the problem of access; be it the time to attend the deliberative inquiry sessions or in participants being comfortable enough to contribute in group environments. It was vital to run the deliberative sessions in parallel to the interviews so that one could informed the other and the researcher make sense of it, this relationship is shown in figure 3. Using the data from the questionnaire to inform the questions and approach of the deliberative inquiry and interviews, which were conducted in parallel, ensured that the subsequent approaches to participants was meaningful. This also was to benefit participants because by introducing data from the questionnaire and interviews, so that the participants had the ability to make sense of the data alongside the researcher – this aligning to the philosophy of critical realism. Within the relationships between the three studies there were two main sampling relationships: 1) opportunistic – mainly through study one (through participation in study one and through circulation of posts on social media: Twitter, LinkedIn and the College of Policing Online Knowledge Area); and 2) a purposeful approach, mainly in studies two and three using two police Constabulary areas in order that an enquiry group be formed. The latter sample would heavily rely upon the number of persons within that area who wanted to take part within a Deliberative Group and could be present on the same date time and location.

Figure 3

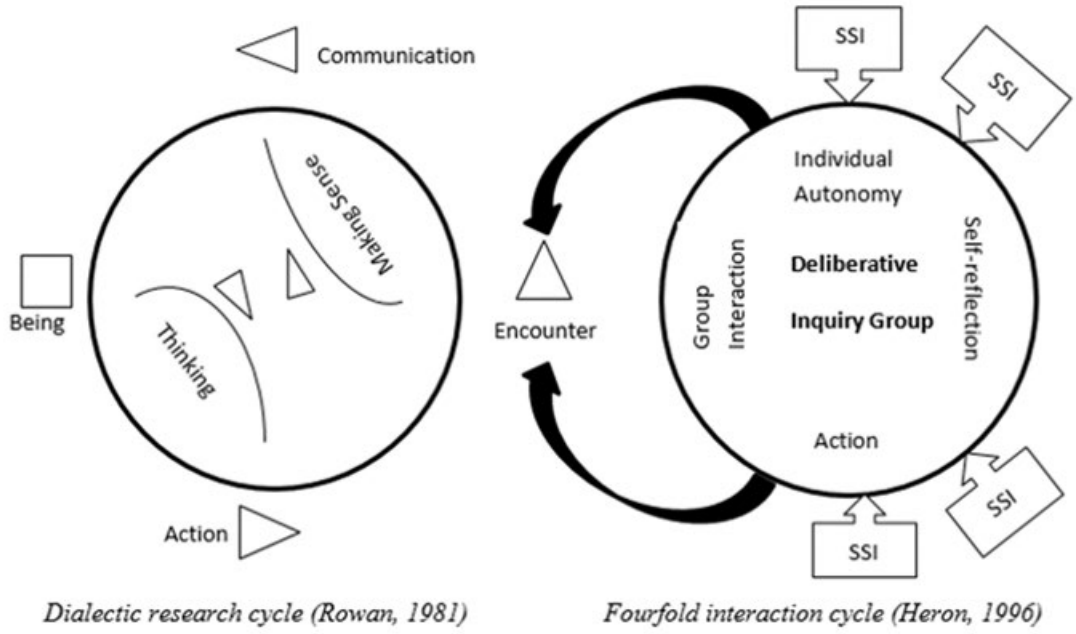
Relationships between the different studies



The design of this research also addressed the problem faced in the feasibility of accessing busy participants, or in the event of a participant electing not to take part in deliberative inquiry. This process of being, thinking, action and communication aligns to a deliberative inquiry approach (Rowan, 1981). The researcher is described as central to the involvement of each participant through managing discussions. The process for participants is different and is described as four-fold: individual autonomy, self-reflection, action, and group interaction (Rowan, 1981). In encouraging four-fold participant interaction, asking reflective and group questions, the process of deliberative inquiry is formed (Heron, 1996; Rowan, 1981; Bhaskar, 1978). The encounter phase is central to linking the researcher to the participants. Figure 4 shows how this is intended to work in a practice sense, including where interviews are being conducted alongside deliberative inquiry.

Figure 4

Combined dialectic and four-fold interaction cycles and semi-structured interviews



Where the researcher directs, a fluid design does not limit the process of constructing new direction, and indeed knowledge, through combined dialectic and four-fold interaction cycles providing the researcher maintains the focus of the inquiry with participants (Rowan, 1981). Glaser (1978) and Charmaz (2009) highlight that the practice of notetaking alone when conducting interviews can limit the richness of the data so sessions are best to be recorded and reviewed at a later data; this is part of the process of dialectic research cycling (Rowan, 1981) and critical realism approach observed during these modes of research (Bhaskar, 1978). A degree of flexibility can be offered in using a research design which uses three modes. The researcher may work through the data as it is gained through each phase of enquiry (Reason, 1988). The merits of this can be the early identification of trends and subsequently the utilisation of these as discussion points, questions and focus for subsequent interviews and stages. This

follows the dialectic structure of both being and making sense (Rowan, 1981: dialectic research cycle) and affords the participants focussed sessions with meaning and purpose. Reason (1988) describes how the practice of memo-writing and linking back to the foundations have significant benefits to the data. What must also be considered is the researcher becoming drawn into the culture during the research phase therefore being unable to make objective sense of the experience (Schein, 1985).

It must be acknowledged that more recent developments concerning action research have included applications to collective problem-solving, self-monitoring and self-reflection. These latter elements may not be fully explored through the employment of this design as the focus is around the subject and not the effect of the method. There is a reliance within Criminal Justice on statistical so-called brute data and positivism (Hughes, 2008). This concern with positivism may only draw distinction between structures and things which exist and can be measured. In human discovery this cannot be accepted as an entirely accurate reflection given that the system is full of consciousness, humanism, and personal subjectivity (Hughes, 1990; Hagan, 1997). This leaves some research with a very narrow field of relevance and exploration. Contrastingly, a critical realism position adopting an action research approach has a real sense of departure in attempting to bridge the gap between what could be argued as positivist forms of data, and phenomenological forms of reality. Therefore, a research design for vulnerability concentrating on quantitative data alone will not explore sufficiently the aim of improving SM applications or approaches to vulnerability.

Research credibility is said to involve rigorous techniques, the experiences of the researcher, and a philosophical belief in the value of qualitative inquiry (Patton, 1999). Therefore, whilst observing these positions of research credibility, most modern consensus on the issue focusses the challenge of matching methods appropriately to empirical questions without favouring a single methodological approach. This typically fits with methodological triangulation, which involves using a different method

to approach the same issue. Therefore, the credibility of this research is addressed using a triangulation of the data and methods to inform each phase of the data collection which is philosophically situated using a qualitative basis to provide a strong basis for the credibility of this research.

2.7 – Conclusion of the methodology and overall research approach

A critical realist paradigm is used, and data is gathered using deliberative inquiry and interviews. The approach within this methodology is designed to elicit what is understood about vulnerability as a concept amongst criminal justice professionals, providing answers to the two research questions (section 1.8). TA will be used to code and present the data. The methodology is not designed to inform what vulnerability is, moreover, inform an understanding of its construction through the dialectic and four-fold approach (Rowan, 1981; Heron, 1996). The method presupposes that any criminal justice practitioner constructs a view of the reality where vulnerability is concerned, and this is socially constructed. There is a purposeful selection of participants towards those who interact on a more frequent basis with criminal investigations and witnesses. Therefore, in the following three studies the focus for participant interaction was with police officers, detectives, lawyers, intermediaries, witness support and advocacy services. The first stage of this was study one which is described within the next chapter. This first study operates to gauge scope on the issue of VIW's and the current research and literature which is identified in chapter 1.

Chapter 3 – Study 1: Exploring current challenges facing investigative practice.

In order to inform future stages of this research the aim of study one was to scope, with practitioners, some of the current investigative responses in relation to existing research around vulnerable and intimidated witnesses (VIW: Nield et al., 2003; Cooper & Roberts, 2005; Cooper, 2010; Bull, 2010; Burton et al., 2007; Burton et al., 2006; CJJI, 2012; Spencer, 2008). Criminal Justice agencies can be sceptical about research of their practice conducted away from their control and one of the most influential ways to inform public debate and policy is to study the problem from within the organisation the research seeks to transform (Byrne & Lurigio, 2009; Nutley et al., 2007). Therefore, the central narrative running throughout this design was to gauge practitioner experience, perspective, and a sense of current practice in relation to current research. This was to inform later phases of this thesis, ensuring a foundation of current practitioner engagement, and not solely basing further study on previous research findings.

The content of previous research has a tendency to focus attention on a number of areas: (1) the experiences of witnesses within the CJS (Hamlyn et al., 2004); (2) the analysis of the criminal case file in respect of applications for SM (Cooper & Roberts, 2005; Cooper, 2010; Charles, 2012) (3) the experiences of practitioners in seeing the value of the use of SM (Nield et al., 2003); (4) the experiences of practitioners in interviewing vulnerable witnesses (Bull, 2010; Franklyn, 2012); (5) the success rate of prosecutions involving SM according to statistical data (HMCJJI, 2009; Finch, 2005); and (6) the overall effectiveness of police forces dealing with those viewed as VIW's (Burton et al., 2006; HMCJJI, 2009). Unlike previous research the focus of this thesis is to understand the context of vulnerability with a focus on the practitioner in order to determine key influences, and examine concepts influencing decision making around VIW's. Thus, giving a new steer to research and contributing to existing knowledge.

3.1 –Method – Study 1: Online questionnaire.

An online questionnaire, through Bristol Online Survey (BOS), was used to engage practitioners across disciplines of policing, courts, lawyers, witness support, government and the voluntary support sectors using a mixture of qualitative and quantitative questioning. Hesketh and Williams (2017) emphasise the growing platform of online and social media engagement by criminal justice practitioners; suggesting that these communities offer research a new form of knowledge capture and creation, one that allows insight into the changing nature of the policing sphere. Therefore, the online questionnaire was ideal to be distributed on social media using the researchers established platforms and network. Study one was designed to deliver qualitative and quantitative data, with analysis being performed using Content Analysis (CA) enabling themes within the qualitative data to be easily understood (Hsieh & Shannon, 2005). The quantitative data was gathered and reviewed within BOS and then reported alongside the qualitative data which is presented and discussed within the results and discussion section. The online questionnaire was open for a six-month period from July 2015 to January 2016.

3.1.1 - Sampling and data collection – Study 1. Participants for study one were invited to take part on the basis that they had some knowledge of the YJCEA, have dealt with VIW's, or have an academic interest in this field. Participants responded anonymously and did not have to specify their organisation. This ensured participants could speak freely about their experiences, without fear that their responses would be identified within the data. Only three of the participants (4.3%) indicated they had no knowledge of the YJCEA. However, they highlighted they were familiar with the general principles and all had held occupations having some connection to the field of VIW (government department, lecturer, academic).

Each of the 70 participants were asked to categorise themselves using pre-set codes: police – Uniform (*n*=27), police - Specialist Investigations/CID (*n*=18), Crown Prosecution Service/State

Prosecution Agency (*n*=4), Defence - Advocate/Solicitor/Barrister (*n*=2), Judiciary/Magistrate (*n*=1), Court Clerk/Court Staff (*n*=1), Government Department (Home Office, Local Government) (*n*=1), Educational (College of Policing, University, Academic) (*n*=7), Witness Care Service/Voluntary Witness Support Service (*n*=2), Intermediary/Witness Supporter/Specialist Witness Support (*n*=3) or other (*n*=4). Within the category of 'other'; participants recorded themselves as retired officer - independent consultant, Ex Detective Sgt (Organised and Major Crime) - Academic with PhD, Lecturer in Criminology and Policing, and Expert witness and interviewer. Participants were informed that the study was part of a wider body of work being conducted around VIW. Participants were not asked to comment on live or sensitive criminal cases, any data on this has been removed from any publication. The questionnaire link was distributed via social networks and there was a good variety of experience and a range of disciplines.

3.1.2 - Constructing measures and questions – Study 1. There were twelve questions within the survey. Eleven were designed to gain quantitative data for analysis using a Likert Scale and one was designed to gain qualitative data using an open text space. The Likert scale used within each of these questions ranged from 1 (strongly disagree) to 5 (strongly agree). The twelve questions were designed to specifically follow the literature and assess the current views of practitioners about the specific claims within literature and case law. The main question themes were: (1) eligibility under the YJCEA; (2) training provided to practitioners; (3) trial procedures and cross-examination; (4) gateways under the YJCEA and assumptions around vulnerability. The questions are presented first before the results can be found in table 5. The value and placement of this question within the survey being to enable the Practitioners to explain in their own words any reflections and highlight their experiences. The entire survey was designed to be purposefully short to ensure that the survey could be completed in a short period of time with an aim of increasing the response rate.

Questions used within online questionnaire:

Q 1: The Youth Justice and Criminal Evidence Act (1999) present sufficient number of opportunities for VIW to be eligible for Special Measures under the 1999 act. In your experience would you agree or disagree that eligibility, under the 1999 act, is an area of concern? Question generated in reference to: Nield et al. (2003)

Q 2: There is a failure to identify witnesses early enough in the investigatory process and opportunities are missed to deploy specialist interview techniques, under the Achieving Best Evidence principles, which later impacts on witness eligibility for some measures under the Youth Justice and Criminal Evidence Act (1999). Do you agree or disagree with this statement as a reflection of current practice? Question generated in reference to: Cooper and Roberts, (2005)

Q 3: Failures within inter-agency infrastructures and partnership referrals results in some witnesses, and applications for Special Measures, being denied because of weaknesses in case-file evidence and case management. Do you agree or disagree with this statement as a reflection of current practice? Question generated in reference to: Cooper (2010)

Q 4: There is inadequate training for investigators around the use of specialist interview techniques and Special Measures under the Youth Justice and Criminal Evidence Act (1999). Do you agree or disagree with this statement as a reflection of your experience? Question generated in reference to: Bull (2010)

Q 5: Some investigations limit the use of Special Measures because of concerns surrounding how an oral testimony would be otherwise cross-examined. Do you agree or disagree with this statement as an accurate reflection of your experience? Question generated in reference to: Burton et al. (2007)

Q 6: There are delays in adequately identifying, gathering and disseminating the need for specialist witness support and this leads to delays at trial stage which could have otherwise been resolved at the point of charge or in the early investigative process. Do you agree or disagree with this statement as a reflection on current practice? Question generated in reference to: CJJI (2012)

Q 7: There is a lack of funding available for witness support services, outside of the police and Crown Prosecution Service, for vulnerable, intimidated, key and significant witnesses. This prevents the effective use of Special Measures under the Youth Justice and Criminal Evidence Act (1999). Do you agree or disagree that this statement reflects your experience? Question generated in reference to: Spencer (2008)

Q 8: The use of Special Measures under the Youth Justice and Criminal Evidence Act (1999) has an adverse effect for defendants on the right to a fair trial under Article 6 of the European Convention on Human Rights. Do you agree or disagree that this is an area of concern? Question generated in reference to: Finch (2005)

Q 9: There is a lack of understanding around the correct 'gateway' (s.16- Witnesses eligible for assistance on grounds of age or incapacity/s.17- Witnesses eligible for assistance on grounds of fear or distress about testifying. (YJCEA, 1999) under which Special Measures could be implemented. This affects the correct use of Special Measures. Do you agree or disagree with this statement as being a reflection of current practice? Question generated in reference to: the case of R v PR [2010] EWCA Crim 2741

Q 10: In the case of R v Iqbal (Imran) & anr *[2011] EWCA Crim 1348 it was only identified that the victim had 'significant impairment of social functioning, intelligence and communication' once the witness had beg*un to give evidence in the witness box at Crown Court. In your experience do you agree or disagree that the use of intermediary or specialist witness support is correctly identified and implemented? Question generated in reference to: In the case of R v Iqbal (Imran) & anr [2011] EWCA Crim 1348

Q 11: All too often the complex needs of witnesses are assumed and the correct identification of vulnerable, intimidated, key and significant witnesses within the definition of the Youth Justice and Criminal Evidence Act (1999) and Guidance on Achieving Best Evidence are overlooked. Do you agree or disagree with this statement as a reflection of current practice? Question generated in reference to: Burton et al. (2006)

Q12: Your comments and experiences of the Youth Justice and Criminal Evidence Act 1999, the use of Special Measures, or the use of any victim and witness interviewing methods are an important part of this study. What are your experiences of these areas of Criminal Investigation?

The questions were purposefully designed to be leading and originate from the existing research, the intention being to gauge practitioners' perspectives whilst leading them to discuss their experiences at the end of the survey. These responses could then be further analysed within the two triangulated studies, meaning also that this was only a first level of approach for this participant group.

3.1.3 – Data Analysis. The qualitative data analysis was performed using content analysis (CA). CA is used primarily as a quantitative research analysis tool with text data coded into explicit codes, the number of times the code was seen within the data is then shown (Hsieh & Shannon, 2005). In simple terms the data was printed, laid out, and examined for themes and those reoccurring most were labelled and counted. From this, eight codes were identified as forming the main basis of the data. These codes were then used throughout the practitioner responses and the number (n) of occurrences of the code were identified and counted. Where qualitative responses contained variables or multiple codes these have been recorded as a single code. One participant response may therefore have more than one code, but this was to enable a focus or topic within the same participant response to be captured alongside frequency. In each of the quantitative responses the participants were answering a question prompting discussion of their own experience. In total there were 70 qualitative responses. In relation to coding, responses were separated by discipline within the categories of police, education, courts, and witness services.

The quantitative data was gathered using BOS, this online survey tool gathers and arranges data as percentages in tables and graphs. The results from this data was then compared between each of the questions and arranged together to show the overall narrative from the study – this can be found within table 5 in the following results section. These were then also compared against some of the qualitative responses, which in some cases, contained a similar narrative to the quantitative data sample.

3.2 – Results and Discussion– Study 1: Quantitative

The quantitative results are shown in Table 5 on the following page and are discussed throughout this section in order of the sequence the questions appeared within the questionnaire itself. The question numbers correlate to the questions found within section 3.1.2. The findings show that several participants disagree or strongly disagree that eligibility is an area of concern under the YJCEA (41.5%: Question 1 – eligibility under the YJCEA). Meaning, that practitioners believe that there are enough opportunities for witnesses within the act for them to receive SM. Nield et al. (2003) found that practitioners shared both positive and negative views about witnesses eligible under the act. However, of the 35.7% who indicated that they agreed or strongly agreed that eligibility was an area of concern the respondents were: police Officers (including specialist investigators), Crown and Defence Counsel, Judicial or Court Staff and Specialist Witness Support. Research indicates that there is a failure to identify witnesses early enough in the investigatory process and opportunities are missed to deploy specialist interview techniques (Question 2 – early identification failure - Cooper & Roberts, 2005). A total 62.8% of participants in the current study agreed or strongly agreed that opportunities were missed in this area. This is a significant admission given the practitioner sample. Missed opportunities are described by Cooper and Roberts (2005) as being where the police or the CPS have simply missed that the witness is vulnerable, intimidated or would require their evidence to be video recorded, or the assistance of an intermediary. This indicates a strong need for research to further identify why practitioners, across occupations, both accept the failure to identify VIW's, and then fail to provide adequate support or recognise the need for SM. Within table five below are the main occupation fields by group (Uniform Policing; Specialist investigation/CID; Courts/Legal/Justice; Witness Service/Intermediary). Those not reported in table five were educational participants, government departments and other occupations such as those no longer serving (n =12). The data is then further discussed.

Table 5

Study one - Responses to questions: Quantitative data sample.

	Q1	**Q2**	**Q3**	**Q4**	**Q5**	**Q6**	**Q7**	**Q8**	**Q9**	**Q10**	**Q11**
Likert Scale					***% & n***						
Strongly Disagree *(All %)*	2.9	2.9	4.3	7.1	7.1	1.4	1.4	20	1.4	4.3	1.4
N = out of 70	*2*	*2*	*3*	*5*	*5*	*1*	*1*	*14*	*1*	*3*	*1*
Uniform Police (n =27)	*0*	*0*	*1*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*
Specialist Invest/CID (n=18)	*0*	*0*	*0*	*2*	*2*	*0*	*0*	*6*	*0*	*2*	*0*
Courts/Legal/Justices (n=8)	*1*	*1*	*1*	*1*	*1*	*1*	*1*	*1*	*1*	*1*	*1*
Witness Serv/Intermediary (n=5)	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*
Disagree *(All %)*	38.6	17.1	11.4	12.9	14.3	15.7	21.4	47.1	15.7	27.1	20
N = out of 70	*27*	*12*	*8*	*9*	*10*	*11*	*15*	*33*	*11*	*19*	*14*
Uniform Police (n =27)	*10*	*6*	*5*	*1*	*5*	*3*	*6*	*16*	*2*	*8*	*8*
Specialist Invest/CID (n=18)	*8*	*4*	*1*	*5*	*2*	*4*	*5*	*6*	*4*	*6*	*2*
Courts/Legal/Justices (n=8)	*2*	*0*	*1*	*1*	*0*	*1*	*1*	*5*	*1*	*1*	*2*
Witness Serv/Intermediary (n=5)	*3*	*1*	*0*	*1*	*2*	*0*	*0*	*2*	*2*	*2*	*1*
Neither agree/disagree *(All %)*	22.9	17.1	30	8.6	41.4	25.7	38.6	20	20	28.6	12.9
N = out of 70	*16*	*12*	*21*	*6*	*29*	*18*	*27*	*14*	*14*	*20*	*9*
Uniform Police (n =27)	*8*	*8*	*13*	*2*	*13*	*10*	*11*	*5*	*7*	*10*	*4*
Specialist Invest/CID (n=18)	*3*	*2*	*2*	*0*	*5*	*3*	*7*	*5*	*3*	*2*	*1*
Courts/Legal/Justices (n=8)	*0*	*1*	*1*	*2*	*3*	*2*	*4*	*0*	*0*	*3*	*1*
Witness Serv/Intermediary (n=5)	*1*	*0*	*2*	*1*	*2*	*0*	*3*	*1*	*1*	*1*	*0*
Agree *(All %)*	30	41.4	42.9	55.7	31.4	44.3	31.4	11.4	54.3	37.1	52.9
N = out of 70	*21*	*29*	*30*	*39*	*22*	*31*	*22*	*8*	*38*	*26*	*37*
Uniform Police (n =27)	*8*	*12*	*8*	*21*	*9*	*13*	*8*	*2*	*17*	*9*	*14*
Specialist Invest/CID (n=18)	*5*	*6*	*12*	*9*	*8*	*8*	*5*	*1*	*8*	*8*	*11*
Courts/Legal/Justices (n=8)	*4*	*4*	*5*	*3*	*3*	*2*	*2*	*2*	*4*	*4*	*4*
Witness Serv/Intermediary (n=5)	*1*	*1*	*0*	*3*	*0*	*3*	*1*	*2*	*2*	*2*	*3*
Strongly Agree (All %)	5.7	21.4	11.4	15.7	5.7	12.9	7.1	1.4	8.6	2.9	12.9
N = out of 70	*4*	*15*	*8*	*11*	*4*	*9*	*5*	*1*	*6*	*2*	*9*
Uniform Police (n =27)	*1*	*1*	*0*	*3*	*0*	*1*	*2*	*0*	*1*	*0*	*1*
Specialist Invest/CID (n=18)	*2*	*6*	*2*	*2*	*1*	*3*	*1*	*0*	*3*	*0*	*4*
Courts/Legal/Justices (n=8)	*1*	*2*	*0*	*1*	*1*	*2*	*0*	*0*	*2*	*0*	*0*
Witness Serv/Intermediary (n=5)	*0*	*3*	*3*	*0*	*1*	*2*	*1*	*0*	*0*	*0*	*1*

There are recognised partnerships within the management of vulnerable people (Question 3 - *failures within partnerships*; HMCJJI, 2008; Cooper, 2010). The data shows that practitioners (54.3%) agreed or strongly agreed that the breakdown in casefile quality has a significant effect on the success of SM. This in turn can have damaging consequences for witnesses who then may not receive adequate support. As with questions one and two, this again is another identified area where concerns emerge, but little explanation is offered by participants as to why this take place. However, this could relate to a lack of understanding amongst practitioners about the roles within the partnerships, or what information is required at each stage of the process. This may also link into the training of practitioners.

Most training around the YJCEA has a focus on the method of the interview (Bull, 2010). Many responses within the results focussed around training (Question 4 – *training*). Practitioners either agreed or strongly agreed (71.4%) that there is inadequate training for investigators, and this was the case for each occupation. It is suggested that there is a tendency within policing to focus simply on interviewing, leaving out key assessment methods or frameworks (Bull, 2010). This leaves a gap in knowledge for investigators about making informed decisions about assessments for VIW. A suggestion has been that Policing focus vulnerability training on harm reduction (Bartkowiak-Theron & Layton, 2012). However, there is little evidence in this data that this is a feature of the training. There could also be a lack of specially trained interview staff to conduct some video recorded interviews, but this does not explain why other SM could not be used for some witnesses.

In previous research there is a suggestion that the limiting of SM is due to a concern over how the witness would otherwise be examined (Question 5 –*cross-examination concern*s: Burton et al., 2007). The data here provided little evidence to support this. Most practitioners, across all occupations, (41.4%) neither agree nor disagree on the effect this may have on SM applications. Limiting SM because of concerns about cross-examination does not show a comparable importance over initial identification and

failures within partnerships to manage VIW within this research. This is problematic because of the lack of an opinion on this subject, it may indicate a wider problem concerning a lack of knowledge around cross-examination as a general principle. This may however be linked to funding and support for witnesses which has been identified as suffering from delays in adequately identifying, gathering, and disseminating the need for specialist witness support (CJJI, 2012: Question 6 – *identifying the need for support*). Practitioners (57.2%) attributed delays at trial to the police investigation, and in most responses by policing occupations this was accepted. This is significant to attributing where the focus of research and development should be made. A limited number of policing practitioners (38.5%) identified that there is a lack of funding which in turn has an impact on SM (Question 7 – *the funding available for witnesses*). The findings from this question also indicate that simple funding formulas may not have the largest impact given the lack of general understanding which is identified in other questions (9 and 11).

Finch (2005) suggests that SM have an impact upon the fairness of trials (Question 8 – *the effect of special measures on the fairness of trials).* The data suggests that practitioners (67.1%) disagreed or strongly disagreed that the use of SM has an adverse effect for defendants on the right to a fair trial. There could also be a relationship where applications for SM are made through the incorrect gateway (Question 9 – *identifying the correct SM gateways).* The case of R v PR [2010] EWCA Crim 2741 was highlighted to participants as an example within the question. Practitioners (62.9%) also agreed or strongly agreed that there is a lack of understanding around the correct gateways for SM under the YJCEA. This also has a relationship between initial identification (Cooper, 2010) and any measure which could be used to assist a witness. However, given that previous research identifies that practitioners assume vulnerability (Burton et al., 2006), this could also explain the misunderstandings around the correct gateway between s.16 (vulnerable) and s.17 (intimidated) witnesses.

The use of intermediaries and case law around social functioning, intelligence and communication (*R v Iqbal (Imran) & anr [2011] EWCA Crim 1348*) formed part of the questions (Question 10 – *intermediary support)* presented to practitioners. Practitioners (65.8%) agreed or strongly agreed that the complex needs of witnesses are assumed (Question 11 – *assuming vulnerability and needs of witnesses*); this is consistent with previous research with similar findings (Burton et al., 2006). Identification is therefore a key element for intermediary support; however, practitioners agreed or strongly agreed to a limited extent (40%) that intermediaries are correctly identified. Some practitioners neither agreed nor disagreed (28.6%) and others disagreed or strongly disagreed (31.4%) that this was a concern. Therefore, the identification of gateways, as opposed to individual measures, could be said to be of greater concern to practitioners and support through intermediaries an area of development.

3.2.2 – Summary of the quantitative results. The first part of the study one used previous literature to guide questions and assess practitioner views of current performance in relation to VIW. Practitioners accept that there are missed opportunities within the initial stages of investigations to identify VIW. This supports the findings of earlier research (Burton et al., 2006; CJJI, 2012; Cooper, 2010). Practitioners believe that the casefile is one of the reasons why partnerships and SM applications fail because of inadequate information provided within the casefile about SM at an early stage within case progression. This is thought to be influenced by standards within training and because practitioners accept making assumptions about vulnerability (Asquith et al., 2017). The extent of this cannot be assessed from the questionnaire but can be further developed in later stages of research. However, practitioners do not appear to show this is influenced by concerns around cross-examination or a lack of funding for witness support programmes as has previously been suggested (Spencer, 2008; Finch, 2005). Practitioners accept that delays within trial proceedings can be due to poor assessments of VIW within criminal investigations. However, SM do not, according to practitioners, have an adverse effect on the right to a fair trial for

defendants. Practitioners agreed that there is a failure to identify the correct gateway under the YJCEA and this can lead to inadequate or missed opportunities to support witnesses. This in turn may extend the period of trial and pre-trial hearings. A suggested direction for further research it to focus on initial assessment, training, and case-file quality.

3.3– Results and Discussion- Study 1: Qualitative

There is a short discussion of the way in which the codes were formed from the data before a presentation of qualitative responses grouped by meanings applied (Hsieh & Shannon, 2005). Table 6 shows the codes which were used, and the meaning attached to them. This data is in response to question 12 (section: 3.1.2):

Table 6

Study one - coding, occurrence, and meanings applied to qualitative data.

Code	Occurrence (*n*)	Meaning Applied
Police Investigation	**21**	The police investigation or assessment of a witness was performed inadequately, too late, or not at all by police investigators. The forms used to assess witnesses were out of date or assessments inadequate or focussed on traditional crime types.
Training not Sufficient	**19**	Participants indicated that training, be it in any profession, was not sufficient or of a poor standard.
Positive Outcomes for VIW	**18**	The process and measures were adequate, efficient or where measures had a positive impact on a case or a particular witness and enhanced the understanding of vulnerability.
Court Procedure	**11**	Indicated that the Courts & Advocates were responsible for mishandling a SM. Court lacked facilities or victims not believed to be vulnerable.

Note. Showing the four main coded themes within the qualitative data from the study one from all participants.

3.3.1 – Code: Police Investigation. The most identified themes (*n* = 21) surrounded the police investigation of a matter involving SM or VIW, this was closely linked to poor casefile and paperwork standards. The code *Police Investigation* was developed from these types of responses. This touches on the way in which the police conduct the process of investigation. Participants spoke of several pressures within this process including custody procedures, police management and poor knowledge of information required within standardised forms (MG2); the quotes below illustrate some of the typical responses seen within this theme:

> *"Often some Detectives will not do an ABE [video interview] for serious cases because there is simply not enough time on the custody clock. There are then pressures from management to get on and deal with jobs and not mess about…"* (Participant: 11016306, Detective Constable)
>
> *"…all too often police will rush ABE's of children and young people because there is a suspect in the cell…"* (Practitioner: 8894972, Police Officer).

Pressures within these areas of Police investigation work may explain why some participants described, and emphasised, poor standards of paperwork which originate from police investigation or assumptions made within the initial investigative stages:

> *"I think there becomes an issue where officers assume the needs of the victim, or in some cases don't even assess it at all, and then try and cobble together an MG2 which is full of woffle and does not contain sufficient detail to allow applications to be considered and granted…"* (Participant: 11069983, Crown Prosecutor)

This suggests that there are a number of factors to consider within the police Investigation which impact on SM applications. This also relates to assumptions, and poor communication using the MG2 in specific reference to the application. The police casefile is one area where little research has been applied due to access to this type of material (Lea & Lynn, 2012). However, HMIC (2015b) does examine

vulnerability which includes some attention of VIW's. This does have a relationship with the type and nature of training delivered to Police Officers, especially where there are issues with the strength and quality of initial witness assessments or identifying VIW. Quotes illustrated competing demands for resources, this impacted higher volume cases most:

> "*…there is an effort to manage the process for victims in a responsible manner but that where the early identification of such victims is lacking it is more than likely due to allocation of resources being dependant on the ranking of seriousness of offences for investigation"* (Participant: 8966300, Crown Advocate).

These responses highlight some areas of weakness within the response by the police to VIW. The problems associated with custody time pressures and those created by a lack of available resources suggest there is simply not sufficient capacity within Constabularies to deal with the potential number of cases. This could also mean that many police forces simply try to be over-inclusive when it comes to vulnerability management, and are too often challenged to define vulnerability, this fails to recognise that some crimes do not need the same response to perceived vulnerability (Bartkowiak-Theron & Asquith, 2012).

Connected closely to the theme of police investigation is the lack of training and awareness for Police Officers and first responders. Police Officers are often required to possess vast and diverse knowledge about what constitutes vulnerability (Bartkowiak-Theron & Asquith, 2012). This does have a close relationship with the type and nature of the offence being investigated. Often participant responses would refer to traditional crimes often associated with VIW, such as sexual offences, serious assaults, stranger, or domestic violence offences. This could provide an inadequate measure of those witnesses who have some learning or developmental needs (under s.16 YJCEA) but where assessment does not take place due to the crime or incident type. This has links to findings around traditionally associated crime types

and vulnerability (HMIC, 2015b) and is a potentially dangerous relationship given that any crime type could involve vulnerable or intimidated victims and witnesses.

3.3.2 – Code: Training not Sufficient. Research has identified that training is needed to improve the response to VIW (Bull, 2010; CJJI, 2012). There is little research which informs practice where the issues with training arises. Although, it is recognised this could be held within in-house training evaluations. One of the most recurrent themes within this study was that training was not sufficient (*n* = 19). This is supported from the quantitative results where overall, practitioners agreed that there is inadequate training for investigators. The quotes below illustrate some of the typical responses seen within this theme:

> *"…poor interviewers, poor and inconsistent training, and failure to use specialist trained interviewers…"* (Participant: 8894972, Police Officer)
>
> *"…front line staff who deal with many witnesses and victims I think they have a very limited and poor understanding of Special Measures…."* (Participant: 8891050, Police Trainer).

However, the simple application and provision of training was also said to include little continued professional development (CPD). The lack of CPD has long been recognised as a distinct risk to the maintenance of standards and skills within interview and investigative skills training where often the responsibility is placed on the investigator to maintain the professional nature of interviewing skills with a lack of input from supervisors around governance, this can also originate within specialist teams (Griffiths & Milne, 2018). Several practitioners highlighted this along with poor initial training and a lack of continued learning:

> *"…post course they are expected to interview young children vulnerable adults and victims of serious sexual assault. There is often no QA process, no CPD opportunities and usually no*

workplace assessment post course with a mentor/tutor…" (Participant: 8927305, Specialist Interview Trainer).

In some areas the training was also confined to specialist teams of Police Officers and Prosecutors and this was held by many to negatively affect the initial police response, this quote illustrates some of the typical responses seen within this theme:

"Front line police officers…are the least trained in this legislation… All too often, front line supervisors have not been trained for years … assessments are all too often made by untrained officers who do not understand the implications of a wrong interpretation." (Participant: 9578257, Detective Constable).

The training of Police Officers and staff has therefore an important influence on the quality of service for VIW and the uptake of SM. The results here show that not only is training a large concern to the practitioners, but it is often without continued development. Those trained within specialist areas have a silo of knowledge which then cannot be accessed by frontline officers who often interact first with VIW. There is a two-fold recognition by practitioners that the frontline officers are ill-equipped, and supervisors do not have sufficient knowledge to reinforce standards in this area. This may change in specialist departments where the experience and knowledge are much more focussed. Police training will often rely upon previous experience to form opinions (Bartkowiak-Theron & Layton, 2012). However, what may explain this area is the lack of risk structured assessment to inform professional judgements. When practitioners rely on unstructured professional decision making, the result is impenetrable and difficult to see why a decision has been made (Kropp & Hart, 2015). There was no evidence within this data of a trained risk assessment or vulnerability assessment model, which could potentially have some benefits. However, it does not address issues around training consistency and continued professional experience relating to research-led literature.

3.3.3 – Code: Positive Outcomes for VIW. Within the qualitative data there were a number (*n* = 18) of sections of data coded as Positive Outcomes for VIW. This code was used where participants had provided positive feedback surrounding the use of SM, the following quotes illustrate examples of practitioner experiences:

> *"I have had cases go to court where witnesses have been provided with special measures and it has made the whole evidence giving procedure a lot more bearable"* (Participant: 8891050, Police Constable).

> *"I am not aware of there being a significant difficulty in the application for and the subsequent use of special measures in crown courts"* (Participant: 9343798, Detective Constable)

Whilst highlighting where SM are used correctly many of the responses reinforced that these were in cases deemed as most serious and in crimes traditionally associated with VIW:

> *"…they work very well - A Live Link was used from an agoraphobic DA victims house to court, they did not need to attend the court or leave the house to give their evidence - really good use of Special Measures"* (Participant: 9440387, Detective Constable)

This supports Hamlyn et al. (2004) where victim's positive experiences took place where a full and proper assessment has been made. However, this was usually associated with more serious offences and again related to crime type, as the following quote illustrates:

> "*…there is an effort to manage the process for victims in a responsible manner but that where the early identification of such victims is lacking it is more than likely due to allocation of resources being dependant on the ranking of seriousness of offences for investigation"* (Participant: 8966300, Crown Advocate)

This has an obvious link to the allocation of resources which is likely due to the seriousness of the offence. This has had limited discussion in the literature but provides an understanding that witnesses are

identified inconsistently due to the type and seriousness of the crime being investigated. This study cannot fully identify the relationship between poor or satisfactory file standards and police assessments, however, HMIC et al. (2015) found in its assessment of police case files: *'there was found to be no difference when a vulnerable or intimidated victim or witness was involved in the case and, in some instances, it was slightly worse'* (p.10). It is clear from these responses that practitioners do value SM for some witnesses and in many cases, this has a positive impact on the witness. Whilst these positive outcomes give an indication of the success of SM, Police Officers described this as limited to geographically isolated pockets of best practice or where procedures have been improved as the following quote illustrates:

> *"... [Police Force] have introduced forms which are fantastic for identifying if a victim/ witness falls into a particular category, prior to their evidence being recorded. It also provides the opportunity to establish if the victim/ witness has any other specific needs that would improve their evidence in court, but this is mainly for sexual crimes..."* (Participant: 8894301, Police Officer).

Whilst some SM are applied following successful applications and assessments this remains a system with vast levels of inconsistency. This may also result in some applications for SM being successful and others failing due to inadequate assessments. The findings indicate that whilst positive for victims the use of SM is limited to discussions around serious offences and some signal offences, sexual crime for example. This does limit positive use of the SM framework and may also impact on the later court procedures.

3.3.4 – Code: Court Procedure. A number of participants identified their concerns around the processes for VIW beyond the involvement of the police. There were seen to be some competing ideals around how a VIW would be presented within the court and provide their evidence. It is recognised within previous literature that often the additional time needed during the investigation, and also during court procedures, to process video recorded evidence from VIW's can be a barrier to the use of SM and there are often competing demands as to the type and nature of the information contained within the evidence; this is sometimes referred to as the investigative and evidential split (Westera., et al, 2011). In simple terms it might be better for the investigators to record video interview to capture the detailed elements concerning a witnesses account; however, ultimately the court may decide some of this information fails to arrive at a concise point of which a jury could understand. This also impacts on the ability to see and hear from the witness in the court, which is sometimes referred to as 'giving live testimony', as the following quotes illustrate, there is still an emphasis on physical presence in the court even where a video recorded interview has taken place:

"...I think that in certain cases it is essential for juries to see victims giving 'live' testimony..." (Participant: 8967782, Crown Prosecutor)

"...in their [police] assessment, and indeed the courts assessment, would a statement suffice? Officers and the CPS should think deeply about the application they are making. Do they really need a video interview or will a screen suffice" (Participant: 11016002, Judge)

Practitioners also emphasised concerns where the practice of prosecuting the case had been inadequate or there had been a desire to dispose of the case without regard for the witnesses as illustrated in these quotes:

"…the CPS never deal with cases as they should and instead decide to barter with the defence over what they can do to get rid of the case…." (Participant; 11016306, Detective Constable)

"…The CPS and defence plea bargaining does not help. That should all be decided before the trial and not during…" (Participant: 11117153, Court Clerk)

These examples may also provide some explanation as to why some conflict exists between the police and those operating within the courts. The processes are somewhat different and again could be concerned with capacity within the system to deal with VIW cases. The process of reducing demand by dealing with a plea early may not, for the police or witnesses, be valued as a fair process or outcome. Similarly, the confidence in the police to use SM where the courts do not adopt that as evidence may influence the use of the measures from the outset. These concerns do feature within a number of responses, to illustrate:

"The problem of special measures is not with the investigation phase but with the court/cps phase where recommendations are either overlooked or dismissed without proper consideration to the needs of the victim/witness". (Participant: 8894420, Detective Constable)

"…barristers seeking to dispose of any special measures [particularly video interviews & live link] at the last minute and ask that the victim provides evidence within the courtroom". (Participant: 9051271, Detective Constable).

One of the other recurrent aspects of this theme was around the courts' capability to be able to deal with VIW applications, as described in the following quotes:

"Magistrates courts are woefully underprepared to deal with video evidence" (Participant: 11030948, Defence Advocate)

"…the courts seem to have poor equipment for playing the discs, sound quality is sometimes poor, edited copies are not always available, or the machines do not work. Often the Live Link sometimes does not work…" (Participant: 9440387, Detective Constable)

This may explain the identified and underlying desire to keep a witness' testimony live within the court. A practitioner's confidence in the technology available could explain the way in which the court process certain cases or do not use SM. This maybe more prevalent in cases of minor offences or where there is a belief that the witness will be able to operate without SM as the following quotes illustrate:

"…special measures for minor offences or perceived minor vulnerabilities. There is still a belief in the court system that face to face evidence is the preferred method" Participant: 10145878, Detective Constable).

"It may be that the police believe the witness is of such a minor a level of vulnerability that they will be able to cope without special measures" (Participant: 10145878, Police Constable).

The recurrence of discussions around minor offences receiving less investigative attention for SM was another prevalent point within the data. HMIC (2015b) found that in some cases, not traditionally associated with vulnerability, the investigative quality was reduced, and victims were not identified as vulnerable, this was discussed by practitioners and the following quote illustrates an example:

"…the criminal justice system is not always favourable to special measures for minor offences or perceived minor vulnerabilities…Police officers may identify a person who is intimidated or vulnerable to a lesser degree and choose to ignore the fact therefore failing to highlight it within the crime file…" (Participant: 10145878, Police Constable).

This association of vulnerability to crime type is potentially very damaging. A precedence that one group of people are inherently more vulnerable than another could lead to bias within the early identification of witnesses. These biases may operate to limit the number of applications for SM. This

maybe because of the YJCEA stipulating the types of crimes which have an automatic eligibility for SM, such as sexual offences:

> *"...Special measures are being identified early by some teams such as rape investigation teams and child abuse teams..."* (Participant: 9111174, Intermediary).

The drive towards traditional or more obvious aspects of vulnerability could also operate to suppress and create other less obvious vulnerability traits. Unless a structured assessment takes place then little support could be provided to the courts that the SM are warranted or are required for a witness. It was clear within the responses that the beliefs of the Police Officers were an important aspect to many applications:

> *"...a belief that the system will pick them up at some stage. It may be that the police believe the witness is of such a minor a level of vulnerability that they will be able to cope without special measures"* (Participant: 10145878, Police Constable).

This response is important in understanding how subtle vulnerability is subjected to variables and bias. Someone who is considered inherently more vulnerable, due to the type of crime or situation specific contexts. This data reinforces the evidence found in HMIC (2015b) surrounding traditional associations concerning who is vulnerable. This explains very little as to why there remains a desire to reduce the use of SM within courts to allow witnesses to be seen and heard within the court. However, as highlighted within the literature review (section 1.5) the English legal system relies upon the principles of orally testified evidence. There are barriers in terms of both facilities and costs which may also reduce and limit the number of applications for SM where Police Officers believe that such applications will either be unsuccessful, or the court will not have sufficient capability to operate the SM for a witness.

3.4 – Discussion

The results from the study one show that the offence type and perceptions on seriousness has an impact upon the use of SM and considerations around vulnerability. Vulnerability has previously been explored in reference to crime type , for example HMIC: *"vulnerability issues are identified at an early point in the investigation, however this was more apparent in those crimes traditionally associated with vulnerability, for example domestic abuse, but was overlooked in other cases"* (HMIC, 2015b). Gibbs (2018) highlights police responses to crimes, usually associated with vulnerability (e.g., Domestic Violence), are often based on myths and over-stated facts. This presence of over-stating amongst practitioners may assist in explaining why some crimes, not traditionally associated with vulnerability, receive less attention around SM.

An emphasis on crime types being an inherent indicator of vulnerability may attach incorrect statistical claims which are not supported by research evidence (Sherman et al., 2017). There was evidence within some of the participant quotes that at least some practitioners do rely on stereotypes when making decisions around VIW's and SM. This may in part be due to a poor understanding, and a lack of empathy (Bartkowiak-Theron & Layton, 2012). Empathy is an underexplored feature of both literature and the curriculum in relation to VIW. One of the reasons why change through training may become so problematic concerning vulnerability are the steps needed to move from traditional perspectives, for example: mindless adherence to rules, acting on other's norms and rules which appear comprehensible and assimilating, and following trends or other inappropriate cultures (Thomas & Inkson, 2003). Mindlessness has previously been discussed to describe a state where practitioner's adherence to rules, isolated context, and isolated training does not allow them to consider other more appropriate alternatives (Langer & Piper, 1987). Traditional training approaches using didactic teaching methods around interview procedure, court processes and procedural justice may not yield significant development, neither will

simply announcing stories of previous investigations which have either been successful or not. Moving away from this may also help to deconstruct traditional attachments of vulnerability to crime or incident type. It is recommended that organisations focus the training of investigators on eight key steps to achieve change: (1) leadership; (2) legislative framework; (3) investigative mind-set or cognitive style; (4) investigators' knowledge base; (5) training and knowledge regime; (6) quality assurance mechanisms; (7) the ability/ skill set of investigator (8) the availability of technology (Griffiths & Milne, 2018). In step five it is recommended that although initial training might be appropriate and suitable, this will often fail where step six lacks robustness and leadership approval – meaning that these steps to achieving change are not a checklist of things, but a systematic process of challenging the way investigations are undertaken.

The Advocate Training Council (2011) identified that training around vulnerability should include both online methods and cascade training, inclusive of inputs from professional body and possess a structure which reflects the practice of on the job professional development. Practitioners indicated that training was an area of concern. Many practitioners believe that it was inadequate and has no continued focus on development. In a number of publications by reviewing body (HMIC, HMCPSI, 2013; IPCC, 2013; CJJI, 2012) there is a strong reference as to the need for joint training between the police, CPS, Court staff and Witness Care. Training along with other professions may improve common understandings between investigative and court roles. Training was found to be ill-equipped, inadequate and taking place in house without professional or academic experiences to guide participants; this supports earlier research findings which suggest concerns over training have been raised in a number of different reports (Bull, 2010; Cooper & Roberts, 2005; HMIC & HMCPSI, 2010; IPCC, 2014; Ragavan, 2013) and these research findings offer few suggestions for improvement.

The results indicate a conflict between the role of the investigator, the prosecutor, and the courts. The results demonstrate the police in some instances instigate SM only for them to be removed or declined.

This is previously not seen in research around practitioner views (Cooper & Roberts, 2005; Nield et al., 2003). The conflict between these roles may be due to different levels of assessment and attitudes around who is vulnerable. The results also indicate pressures between the role of investigator and prosecutor which are not obvious. For example: where investigations are subject to time limits based on police detention. This is not explored within previous research findings. However, this is an aspect that clearly emerges when discussing SM amongst practitioners and within the findings of this study.

Practitioners highlight some assessment frameworks used to assist in determining vulnerability. However, these are not reflected across all the participant responses. This indicates that assessments are sporadic and without structure. These additional assessments are not explicitly discussed in previous research (HMIC, 2015). There does not appear a measured or consistent assessment process which is reflected across all witnesses. This may impact on the criminal file and communication assessments found within previous research. This finding supports previous research (NAO et al., 2012) indicating that using additional documents in this way, or amending some standardised documents, has seen some success in limited areas. However, there is still little research available on the quality of criminal case files and the current reliance being on government inspectorates and court data.

Practitioners agreed that there was delays in adequately identifying the need for specialist support. Cooper and Roberts (2005) and Cooper (2010) both placed the emphasis on identification from the outset and found that this did not happen sufficiently in all cases. The current results support the findings of this earlier research. The findings also contribute new understandings as there are links to the type and nature of the offences and often assessments rely upon the beliefs of Police Officers. They are not in all cases supported by structured assessments and are influenced with the later court stages by the desire to see and hear witnesses within the court. These subtle influences may contribute to under-assessment in some cases or divert investigative attention. This again links back to the need to look beyond traditional focusses

around vulnerability and consider a greater focus around training which involves approaches empathy (Bartkowiak-Theron & Layton, 2012; Thomas & Inkson, 2003; Stebnicki, 2000).

HMIC (2015) identify that Police Officers receive an initial intensive training (covering for example: initial crime investigation, public disorder and safeguarding) along with a two-year probationary period where some officers receive further extended training. Despite these measures HMIC (2015) report that many supervisors do not understand or routinely check case files for compliance with the vulnerability measures. This may explain why criminal case files are not checked for vulnerability measures or why practitioners feel there is a lack of supervisory oversight around vulnerability. The results of this study also support that in many cases police supervisors lack knowledge and experience in dealing with VIW cases.

The Victims Code (MOJ, 2015) states: *"All victims of a criminal offence are entitled to an assessment by the police to identify any needs or support required, including whether and to what extent they may benefit from Special Measures"* (p.13). The practitioners indicated within the findings that assumptions were made about the vulnerability of some witnesses. This is consistent with previous research (Burton et al., 2006). There is no discussion within these results of efforts and assessments made around the nature of vulnerable defendants. This also receives little research attention. One factor which has been explored amongst health practitioners is empathy fatigue – a state of emotional, mental, and physical exhaustion that occurs in response to continued and repeated stories of illness, stress, and trauma (Stebnicki, 2000). Unlike bias, empathy fatigue may feature in situations of repeated contact with traumatised witnesses. The acknowledgment by practitioners of the making of some assumptions might relate to previous contact or experiences in which the practitioner uses to form a normative rule. This is not previously explored in the context of VIW.

3.5 – Limitations

This study was designed as a preliminary exploration to engage practitioners using the framework of previous literature. The overall participant rate and the combination of the qualitative and quantitative data does provide a focus for analysis and crucially provides a scope for the second phase of the research. The data from this phase of the research will be further explored in the participatory deliberative inquiry and furthermore in SSI. This phase has provided the basis for questions in further aspects of this thesis. There is a reliance within the distribution of this survey upon social media and the researcher's professional network, this may have limited the potential sample, and available participants within disciplines other than those within Policing and the interviews and deliberative inquiry will widen this participation.

The potential for available data in this survey was restricted to the twelve questions within the survey and these really do not allow the participants to provide any deeper meaning to their answers. Within the following phases of the research the deliberative inquiry and interviews are designed to gain deeper understanding and in particular the deliberative inquiry will use data from this study as a forward discussion point. The alternatives to this study phase methodology may have been to conduct some interviews with practitioners and question how the development of research could be presented within the area of SM. However, this may have further limited the potential available data and participant sample.

3.6 – Summary and Impacts for further research

There remains an area for development in the early identification of VIW's and understanding vulnerability. Practitioners self-identified an inefficient infrastructure around case-file management, and poor initial assessment which is often informed by crime type. These findings support research describing how some criminal justice practitioners can foster a mindless approach to some procedures (Langer & Piper, 1987; Thomas & Inkson, 2003) and rely on unsuitable indicators for vulnerability, such as: previous

experiences with victims or poor internal guidance. There is evidence within the data of a conflict between the roles of the advocates and investigators. The operation of this may foster some miscommunication between the two roles which are inherently different – one prosecution and the other investigation. Whilst the focus of other research within the field has given attention to the relationships between training interview methods and analysing victim data, less attention has been given to the relationships of investigator and prosecutor. The question about how best to train practitioners to deal vulnerability remains. A suggested approach might to surrounding empathy, understanding mindlessness (Langer & Piper, 1987), and what role empathy fatigue might play within vulnerability identification (Stebnicki, 2000). The results of the current study formed the basis for discussions in the next stage. A deliberative inquiry will examine further the nature of vulnerability, the effect of the YJCEA and applications for SM, and the roles between advocate and investigator. This will be alongside semi-structured interviews which will be performed to explore the findings here further and offer access to participants who are unwilling to be part of any deliberative inquiry. This being with the aim of providing a robust and triangulated method as outlined within the methodology chapter.

Chapter 4 – Study 2: Practitioner dialog using Deliberative Inquiry

This study examines criminal justice practitioners' perceptions and understandings in relation to vulnerability and VIW. The study method uses a deliberative inquiry with criminal justice practitioners, namely, police officers, victim support, local authority workers and specialist victim advocates. The study is designed to open a dialog between research and practice, to further explore what vulnerability means to practitioners and how they describe and define it. Thematic Analysis (TA) will be applied to the data as an analysis often used within CR research to examine qualitative results (Braun et al., 2014). The data is then presented by themes of the results before a conclusion is made. In relation to this thesis, this study further develops the findings from study one, which were namely: (1) practitioners often assume vulnerability; (2) training is not sufficient; (3) During police investigations assessments are fragmented, performed late, or are ill-informed; (4) advocates mishandle SM within courts; and (5) where SM are applied successfully this has a positive impact for witnesses. The current chapter begins by describing the method of this study, before looking at sampling, measures, and questions and further at how the data was analysed.

4.1 – Method – Study 2: Deliberative inquiry.

Marshall and Rossman (1999) highlight a number of key principles in relation to participants: negotiating entry, interpersonal considerations, ethical enquiry, reciprocity, anonymity and moving on from participation. Given the often-sensitive nature of working within criminal justice, where practitioners may speak of their experiences, concerns, and reflections according to cases they have been involved with, there is a two-fold process anonymity: 1) in the data report; 2) within any interaction across participants. In the development of this study it was intended that three enquiry groups would be developed from a multi-disciplinary field of practitioners: police, courts, and witness services, including the third sector. It is important that researchers, even as practitioners, do not become heavily involved with the deliberative

discussion, only intervening when the flow of conversation ceased, or the topic drifted away from the research focus (Reason, 1988; Huey & Mitchell, 2016). Reason (1988) suggests that it is natural for groups to work together where there is a common organisational goal and setting. Often, practitioners would agree to take part with the deliberative inquiry, then enquire about who else was in the group, later deciding that an SSI would be more appropriate and one of the key points of participation was the anonymity of the professionals involved. It became challenging to attract the diversity of practitioners within the group from different organisations, mostly this was due to a reluctance to discuss the problem of vulnerability collectively. In some studies, it is argued that this can take place within as little as the first six interviews and in broader studies, it can occur within the first twelve interviews (Guest et al., 2006). Although this is largely considered to be a subjective concept and reliant on the analysis of the data itself in order to draw any real conclusions. This therefore was a continual process and no precise figure was placed on the number of participants required.

Although answering as individuals within the deliberative inquiry, nothing prevented interjection by another participant. Indeed, this prompted further discussion in some sessions, and perhaps deeper meaning in response to the questions posed. This became more a facilitated discussion within sessions two and three. The group went deeper into the analysis that they themselves were doing. By the end of the third session the discussion had come to a natural end and whilst a fourth session was intended, this was not required. In the final session the group had several quotes originating from study one (see Ch. 3, section 3.3) and they were prompted to discuss these as a group. The quotes did not necessarily change the nature of the discussion but did bring some focus to problems faced between the interactions of different criminal justice practitioners. In selecting quotes to discuss, most police practitioners discussed those that seemed to feel either very personal or in some way comment on police procedures or efficiency. This process was very useful in developing discussions where other disciplines were not present.

Once an approach had been made to a Constabulary then participants within the organisation were invited to participate. Participants were not be asked to participate in both interviews and the deliberative inquiry. The inquiry group was established in three to four hourly blocks, participants where be asked to attend each of these sessions. However, as suggested by Mead (2001), there was no barrier should a participant attend one but not all the sessions. Once a participant had been involved with either the inquiry group or interviews then a transcript was made available for the participant to review. However, as with the voluntary nature of this research no such review was mandatory. The sampling and interviewing process was undertaken between July 2016 and August 2017. Although some work was done prior to this around the arrangements of Constabularies and organisations willing to take part. The point at which the researcher reached saturation was the point at which the generation of new data ceased which is assessable at the point on which no new information or themes are observed in the data (Guest et al., 2006; Reason & Bradbury, 2008).

4.1.1 - Sampling and data collection – Study 2. The first enquiry group began in November 2017. There were fourteen practitioners. Predominantly these were Detectives (n=8), Police Constables (n=3) and Witness Care (n=2) of which one was an Independent Sexual Violence Advisor (ISVA). There was also a representative (n=1) from the local Council who specialised in supporting those with challenging behaviour. Sessions were audio recorded in order to refer-back and perform data analysis. This is important within qualitative research and when using TA to analyse data (Braun et al., 2014). The participants were predominantly recruited via invitation, and social-media platforms such as LinkedIn and Twitter, as well as recruited directly from criminal justice organisations, and Police Forces, where authority had been obtained from the Chief Constable, Chief Executive or a Senior Leader within the organisation.

The recruitment predominantly took place over e-mail and conversations between me, as the researcher, and other practitioners reaching out to encourage others to participate. Each session is now further discussed along with analysis of the data and the deliberative inquiry sessions are presented in the order they took place: (1) perception and orientation of vulnerability; (2) reaction and understanding of third parties; (3) perceptions of case law.

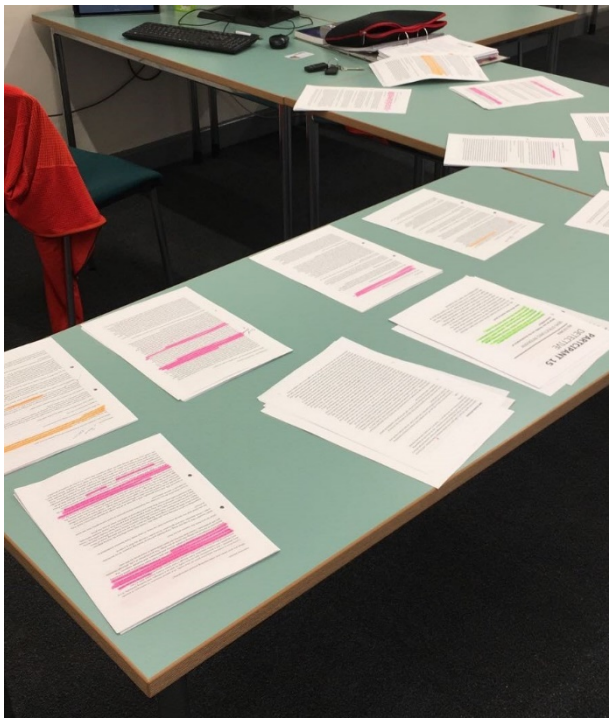
4.1.2 – Constructing measures and questions – Study 2. The practitioners, having received in advance a Participant Information Sheet, had volunteered to take part within the research, and with knowledge that they would be part of an interdisciplinary group. What became noticeable was that the predominant establishment of the group were Police Officers, with only a relatively small number of other agencies. No one from the Court, defence, or prosecution, offered to participate with the inquiry group alongside police and other colleagues. This is in itself significant given the context of the common goals which seem to exist between these organisations. However, many practitioners from the Courts opted to take part via interview (see Ch. 5) which led to an interpretation that some issues would be presented in attempting to ever bring these two groups together in a research context.

There is no barrier in terms of participant characteristics, however, participants were screened to include those with current knowledge and experience on the issue of vulnerable and intimidated witnesses. Only those 43 Constabularies of England and Wales were asked to take part, excusing Scotland and police services of the islands which have important legislative differences when compared with England and Wales. There is some reliance held within this research that the participants would take part because of a healthy interest within the topic area. Patton (1990) describes that a participant's involvement in research as a volunteer usually comes from a desire to help and inform some aspect of a system which they themselves are involved. One key ethical factor within this research was that it was

being conducted by a researcher who was also a practitioner themselves. There was no deception of this fact and participants were informed of this.

4.1.3 – Data Analysis. The deliberative inquiry and interview data were analysed using thematic analysis (TA) which is an analytic approach used to identify themes within data (Braun & Clarke, 2006; Boyatzis, 1998). TA is a widely used analysis method however there is no clear way in which the process can emerge. Braun and Clarke (2006) suggest that the process of data analysis should contain six steps: (1) familiarisation with the data; (2) generating initial codes; (3) searching for themes; (4) reviewing themes; (5) defining and naming themes; (6) producing a report. These logical steps are following within the data analysis for this thesis. The supporting data from the transcribed interviews and group sessions is provided to show insight into the placement of the codes themselves. There are three key terms within the analysis of data: inductive, deductive (Denermark, 2002) and theoretical (Braun & Clarke, 2006). Within figure six you see how some of the data were set out to apply the analysis using Braun and Clarke's approach. The sections were highlighted, set out side-by-side and cut out to ensure themes were correctly searched, reviewed and defined before being reported.

Figure 6: *Image of data processing – study three*



Within a deductive approach some data is discounted as it does not fit a theoretical framework (Denermark, 2002) and within the analysis this data was set to one side and returned for comparison before being discounted as not following any distinct theme. Within this inductive approach: *"The primary purpose… is to allow research findings to emerge from the frequent, dominant, or significant themes inherent in raw data"* (Thomas, 2006; p.238). However, induction usually involves evolving research questions through coding (Braun & Clarke, 2006). In this case theoretical thematic analysis – doing analysis with a defined research question – is most appropriate, the same six step process was adhered to and the findings are now discussed.

4.1 – Results and Discussion – Study 2.

This results section presents the findings using the focus of the DI sessions: (1) perception and orientation of vulnerability; (2) reaction and understanding of third parties; (3) perceptions of case law. The deliberative inquiry has taken place simultaneously to the third study using Semi-Structure Interviews (SSI). Practitioners, who had elected to take part within the research but not as part of this deliberative inquiry phase, participated by SSI and these findings are discussed in Chapter 5.

4.2 – Deliberative Inquiry Session 1: Perception and Orientation of Vulnerability

This first session took place in November 2017 and involved fourteen practitioners from Uniform Policing, Detectives, and those working to support victims. The inquiry session lasted one hour. At the commencement of the meeting, the aim of the deliberative inquiry was outlined. Each practitioner was provided with a paper titled: *Perception and Orientation*. The paper was split into three parts: the first contained two statements (appendix B, p. 215), the second contained three questions. The questions were: 1) what characteristics do you feel are important to identify? 2) What experiences do you have within your organisation or department? 3) What are the hurdles to communicating this between organisations? A third section offered space for practitioners to write down notes under two headings: characteristics and

definition. This provided some initial basis so that practitioners may begin to discuss the topics in a structured way. There was a thirty-minute discussion in smaller groups, followed by a thirty-minute audio-recorded session with each of the smaller groups participating. This allowed practitioners to discuss the statements and questions before responding, handouts were collected after the meeting to enable a review of any written notes.

In highlighting that participants could, if they desired, note down a characteristic or definition of vulnerability, in addition to the verbalised discussion, this provided another avenue for engagement and reflection. The session began by asking practitioners to discuss, within smaller groups, two statements: firstly, from Bartkowiak-Theron & Asquith (2012a): *'vulnerability' is often a term used to describe a multitude of complex social areas. It can lack definition and universal meaning between different organisations*. The second being from Cooper et al. (2005) *There is a failure to identify [vulnerable or intimidated] witnesses early enough in the investigatory process and opportunities are missed.* The statements were used to focus practitioners' experiences as a point for discussion. The statements were selected as they contribute to two major findings of knowledge identified within the initial literature search for these studies (see sections 1.4 & 1.5 of chapter 1): firstly, vulnerability lacks definition and is complex and secondly there is a failure to identify VIW. The statements generated more discussion and the two findings had also been found during study one (see chapter 3 – study one method and results section 3.3). The intention being to further develop an understanding of the layers of reality which exist within approaches to vulnerability. As each study (1, 2 and 3) are triangulated to explore the same problem using different approaches, the statements also provided some continuity between the problem under exploration and therefore provided focus. The statements were also purposefully reflective of the literature and in the second statement, this directly related to the practitioner's occupation. Overall, the statements provided a two foundation discussion points which focussed discussion.

4.2.1 – Session 1: Written Notes. Some practitioners, for example, simply wrote mental health and then used some words to describe the meaning of this. The number of times (*n*) represents the number of times the characteristics appeared and are presented followed by the written describing words. This data is included here because it encapsulates the conversation, a reflection of the discussion, and helps to identify key concepts of and associated characteristics presented by the practitioners themselves. Table 7 shows the highest occurring written characteristics and table 8 shows the remaining lower occurring written characteristics.

Table 7

Highest occurrence written characteristic information – inquiry session one

Written Characteristic	**Occurrence *n***	**Written Describing word(s)**
Mental Health	6	Hidden issues, don't know, embarrassed learning styles, cognitive function, overt unidentified, perception of judgement, offending, depression, we don't ask, they don't know, fear of being seen as a lesser person.
Age	5	Young, inexperienced, maturity, education, older, mobility, understanding, fragility, capacity and sexual awareness
Capacity	5	Hard to identify, restrictive.
Drug & Alcohol Addiction	4	Dependence, priorities elsewhere, drugs alcohol, physically and mental effect, medication commitment, lack of belief, embarrassment.
Physical disability & Health	4	Mobility, learning, speech
Autism	4	Demand avoidant, not diagnosed learning style effected, behavioural problems.
Learning Difficulty	4	Cognition, speed processing

Gudjonsson (2006) described psychological vulnerability as possessing four types, including mental health. The data here supports that practitioners do consider mental health as being a key characteristic of vulnerability. A deeper understanding can be found within the words used to further describe this. Preceding mental health came terms like 'hidden' and 'perception'. This also supports one of the central difficulties with identification of vulnerability as often issues around vulnerability are harder to identify due to generalisations in language (Burton et al., 2006). Within the written responses however some practitioners commented that sometimes professionals may not ask or enquire about specific vulnerabilities. So, whilst they can identify characteristics associated with vulnerability this is at a surface level and not sufficient for the type of detail required in many assessments for VIW (Beckene et al., 2020).

As the practitioners began to discuss their experiences within these written terms, the data began to have additional meaning and focus. Participants began to draw out some of the challenges faced, including the breadth of what might be included and how some terms are over-inclusive, to illustrate:

> "…s*o one of the areas we spoke about was around mental health which encompasses such a lot and everyone's got it [mental health] somehow…"* (Participant 13, Detective)
>
> *"…there may be more than one characteristic and that could domino onto another…"* (Participant 3, Victim Advocate)

Practitioners described issues as possessing overlap and sharing characteristics. Asquith (2012) argues some of the problems associated with vulnerability management is that the terms, like mental ill-health, become too inclusive. The findings show that practitioners described age, capacity, and drug and alcohol addiction separately to mental health and then use different words to describe this. For example, the term capacity was used both within the characteristics and the describing words. This may mean that capacity is problematic and a hard topic area to define, therefore it becomes over-inclusive. Capacity is a feature of psychological vulnerability which is linked to other behaviour areas (Gudjonsson, 2006). It

could be suggested that ranking or determining that some characteristics possess a high importance or value may create the effect that these should receive more attention. This could create and unbalanced representation of actual vulnerability where an organisation chooses too much focus on a topic or area. Within table 8 are the other identified vulnerabilities and characteristic data.

Table 8

Lower occurrence written characteristic information – inquiry session one

Written Characteristic	Occurrence	*n*	Written Describing word(s)
Language		2	Use, accent, barriers
Ethnicity		2	Minority Groups, Isolation. presentation.
Member of Organised Crime Group		2	Unwilling to speak out, isolated.
Environment		2	Personal characteristics, isolated.
Neurological Issues		1	Identification of disorders, different
Attention Deficit Hyperactivity Disorder		1	mental functioning
Sensory Processing Difficulties		1	Sound, light, proximities
Anxiety		1	apprehensive, unable to speak out, quiet.
Social Communication Difficulties		1	Skewed perceptions leading to contradictory information.
Nature of the Incident		1	Traumatic, intimidated, under pressure.

The data here further supports that the practitioners were identifying characteristics described by Gudjonsson (2006). What becomes apparent in asking the participants to record their response in this way is that none chose to mention the type of crime or incident (e.g. domestic violence, sexual assault, modern slavery). This is significant as often vulnerability is discussed as being attached to crime type which can provide a misleading insight into who is vulnerable (Walklate, 2011; Green, 2007; Bull, 2010; Asquith, 2012). Asquith (2012) discusses that crime or incident types receiving most attention often detracts from those areas not receiving the same recognition, creating imbalance. The data here suggests that whilst practitioners are referring to some characteristics more frequently, the findings offer that these may flow through a number of areas. Gudjonsson (2006) also suggests that these cumulative elements may be

assessed together and form the basis of the overall assessment and should not be discussed in isolation. However, the findings indicate that there is some hierarchy when discussions take place. This may also demonstrate the field of experience within the participants. This is further explored by practitioner discussion.

4.2.2 - Deliberative Inquiry Session 1: Practitioner Discussion. This section deals with the data from the results from the discussions in each of the deliberative inquiry sessions. The data here has been transcribed word-for-word and the data then read several times to generate understanding. Some sections of text were then removed and laid alongside others to understand themes. Significant quotes were then used to evidence themes, and these are presented here. Broadly there are three themes: (1) non-verbal communication; (2) perceptions on credibility; and (3) assessment and joint working.

4.2.2.1 – Theme 1: Non-verbal communication. It became immediately clear when practitioners began to describe vulnerability that they rely on indirect interpretations, this can best be illustrated using the following quotes:

> *"... Or had I got the impression, say about autism, but it was undiagnosed. That would've been more difficult..."* (Participant 12, Police Constable).
>
> *"...if it's quite obvious when you are speaking with the victim or the witness, and they start talking about things like their CPN or something like that, or appointments they've had then that's fairly obvious and identified.* (Participant 13, Detective).

The practitioners refer to the almost subtle interaction between visible, less visible, diagnosed, and undiagnosed conditions being a feature of their vulnerability assessment. It is recognised that many identification methods for mental health conditions rely initially on perception and judgements (Morabito & Blank, 2017; Majeed-Ariss, et al., 2019). The findings support that police practitioners rely on the same

principles; for example, using reference to appointments with mental health practices or drug and alcohol teams as associating someone being a vulnerable person.

Non-verbalised, indirect, communications are an indication of the subtler way in which vulnerability may be interpreted, but not consistently or clearly identified. In this case, and with reference to discussions around some of the assumptions found within the study one (see Chapter 3, section 3.3.1) the presence of non-verbalised communication has a sense of meaning when discussing the context of vulnerability assessment, to illustrate:

> *"…The issues that come out of that is that if we don't ask, or they themselves don't know or don't realise, or that they are embarrassed or concerned to discuss it..."* (Participant 13, Detective).
>
> *"...sometimes the information is limited and people rely too much on what is already on Police systems…"* (Participant 10, Detective).

Walklate (2011) describes how a reliance on labelling can have a damaging and negative effect upon communications where new information is not sought during assessment because it is already considered to be known. This has a relationship with mindlessness and empathy fatigue - a reliance on the same factors within previous interactions with vulnerable people, or failing to assess fully due to a fatigued professional response, can lead to inadequate responses (Stebnicki, 2000; Turgoose et al., 2017; Andersen & Papazoglou, 2015; Langer & Piper, 1987; Thomas & Inkson, 2003; Langer et al., 2010; Palmerino et al., 1984). Practitioners themselves identified that in failing to question further on matters of their vulnerability the response can be left to perception and previous information held by agencies. This also supports that practitioners may only deal with vulnerability where it has been previously acceptable (Young, 1999; Walklate, 2011) or conforms to routine narratives and policy-led organisational priorities.

4.2.2.2 – Theme 2: Perceptions on credibility. The credibility of witnesses is discussed within a number of areas of research (Wilson, 2003; Sprak, 2015; Doak & McGourlay, 2012; Fiedler, 2019; Maras et al., 2019) and often this has a distinct legal implication. It is not often discussed in the context of VIW's and SM and is previously unexplored in these terms. Practitioners discussed this close relationship in their approach to vulnerability, choosing to refer to this when discussing which cases received investigative attention, the following quotes illustrate this:

> *"…the [Court] want to see everything at all which is undermining about that victim, sometimes the very issues that are seen as vulnerable are the issues that are seen as undermining…"* (Participant 13, Detective).
>
> *"…seeing it as a reason to not believe someone, when actually it's a reason why they have been targeted because they are vulnerable…*" (Participant 5, Detective).

Previous research findings simply suggest that VIW's must be believed (Burton et al., 2006). This is an untenable position given that investigations are primarily about fairness to the evidence, and not the wholehearted belief in one witness over another. This does not observe that an assessment of credibility is often considered as being a feature of witness assessment (Sprak, 2015; CPS, 2018 Majeed-Ariss, et al., 2019; Maras et al., 2019). This does however have a significant bearing on the focus and attention given to the progression of cases involving VIW, many practitioners agree that this as a significant feature of investigation management and this is illustrated in the following quotes:

> *"…they [witnesses] may think that they would be viewed as less credible or believed, or obviously someone is not viewed as that 'ideal victim or witness'…".* (Participant 13, Detective).
>
> *"I am dealing with a [home] burglary whereby there are several victims, all different age groups and all different mental health issues…the strength of our case is that vulnerability but often it's not seen like that, they are viewed as not as credible"* (Participant 1, Detective).

Previous research has not examined the extent to which credibility is a factor within the initial assessments of witnesses. The data here shows that credibility assessment forms a large part of the way in which VIW's are assessed. The strength of the case might be the vulnerability and circumstances of the witness, in that this has contributed to their targeting by some perpetrators. However, if the overriding presumption is that these witnesses are less credible then this may have a significant impact on the number of cases involving VIW which are progressed. Legal principles do exist around credibility, for example: Onassis v Vergottis [1968] 2 Lloyds Rep 403 suggests credibility is much more than mere demeanour and truthfulness and sets out a number of key tests which include: who a witness has spoken with, how their account is recorded, and its accuracy against other evidence. These findings support earlier reports (Jay, 2014; Maras et al., 2019) in that the assessment of credibility may impact much earlier within the criminal justice process than merely court proceedings (Kebbell et al., 2004). This preconception about witnesses' ideal status may originate from the court. Ultimately considering this too early within investigations may hinder wider thinking about vulnerability identification, having negative effects on the way in which victim's evidence is presented.

4.2.2.3 – Theme 3: Failed assessment and joint working. The practitioners described vulnerability management as being one based on referrals and partnership working. Critically, most believed that processes had become detached from reality and that vulnerability was considered differently between organisations, illustrated here as:

> *"…My experience of that is that social workers don't want to go to do video interviews…sometimes we disagree on who is vulnerable and for what reasons".* (Participant 5, Detective).

This supports earlier research suggesting that the construct of vulnerability is not universal (Bartkowiak-Theron & Asquith, 2012). Practitioners also described how often they would make referrals without being sure of certain of any specific benefits to the individual. This supports the theory of mindless

actions towards vulnerability and merely an adherence to process without structured thought (Langer et al., 2010; Thomas & Inkson, 2003). These referrals may then form the basis of future assessments and could inform an inaccurate picture where vulnerability is concerned. The following best capture what was seen across many quotes:

> *"…sometimes the assessments we do don't have any purpose and I don't know what happens with the referrals I make, I only know that I have to do them…"* (Participant 4, Detective).
>
> *"…it's a capacity issue isn't it and dovetailing services into that. The people who can be involved at the same time, and a lack of a shared understanding about what we all do and where referrals go…"* (Participant 14, Social Work Practitioner)

This supports literature suggesting that a mindless attitude may take hold where practitioners lack full understanding and merely adhere to policy-led rule making (Langer & Piper, 1987; Thomas & Inkson, 2003). Practitioners described how the relationship of vulnerability assessment should be viewed as an ongoing process, but currently felt this was characterised as a single 'one-time' assessment based on the submission of a report or grading some specialised assessments (e.g. Domestic Abuse Stalking and Harassment [DASH] were mentioned).

The practitioners expressed some criticism of the way in which these assessments were conducted, often with a subjective grading applied, and some without detail of others who may be involved such as children or other vulnerable adults. The practitioners recognised this as a recurrent issue and the following quote illustrates their discussion most accurately:

> *"…we are seeing it as a case that we need to get home or assessing things once, but often a one-time assessment is all that takes place, then someone else comes along for another assessment…"* (Participant 4, Detective).

Tepin (1984) highlights that single one-time assessments often fail in addressing key issues around how valuable the report is to other agencies and how much information is obtained to begin with. This may explain why the research has found weaknesses processing SM for VIW (Cooper & Roberts, 2005).

Practitioners also discussed that the processes between the police and the courts could act to disadvantage some witnesses, based simply on competing values between organisations around the use of witnesses, for example in court procedures. There were several quotes illustrating this, for example:

> *"…They then have a total different perspective because it's about that performance at court and they still like a live victim or a witness, and if the jury like it, then the barristers like it and the judge likes it. Then it becomes not victim focussed and becomes court focussed…it then becomes about the needs of the court…"* (Participant 13, Detective).

These discussions support study one, where the presence of a victim within the court had a bearing on the approach taken for SM. This may explain why, in some cases, SM are not applied for if there is a belief that the measures will not be a preferred option for the court. These are competing demands and the findings here support previous findings suggesting that witnesses will be guided by practitioners (Haber & Haber, 1998; MoJ, 2011; O'Mahony et al., 2011) and often lack a freedom of choice or express opinion.

4.2.3 – Summary: Deliberative Inquiry Session 1.

In concluding on this first session there were three main themes: (1) non-verbal communication; (2) perceptions on credibility; (3) failed assessment and joint working. Firstly, there are variations in assessment terminology; this includes terms like 'reliable' and 'credible'; both of which are legalistic concepts. Secondly, what becomes apparent from this first session, is that practitioners do conceptualise and communicate vulnerability in different ways. Practitioners use terms such as 'mental health', 'repeat victim' and being 'victims of lifestyle' to apply their own meaning to the concept of vulnerability. The

largest organisational difference in the terminology around vulnerability seems to be between the police and courts. However, others may exist between police and Social Work. These roles are invariably different and there is an understanding, certainly amongst these practitioners, of a reliance on non-verbalised and environmental factors, and communications in relation to an assessment of vulnerability. Practitioners describe some processes as being without meaning, symptomatic of a mindless approach (Langer & Piper, 1987; Thomas & Inkson, 2003; Langer et al., 2010; Palmerino et al., 1984). The views of other practitioners are now discussed within session two.

4.3 – Deliberative Inquiry Session 2: Reaction and Understandings of other Practitioners.

This second meeting had two key themes: firstly, there is conflict between orality and SM, and secondly practitioners felt that there was a lack of training for investigators dealing with SM. This section is split into these themes. The second meeting of the DI group was designed to understand how the practitioners would interpret and react to information from other practitioners from outside the group. The findings from study one (Ch. 3, section 3.3) were used to facilitate this. The second meeting took place six weeks after the first. It was intended that the group would be attended by each of the practitioners forming the first inquiry session, for some this was not possible. The final attendees were sent a list of quotes from study one, namely: Court staff, lawyers, and academics as these were not represented in the group.

The participants of the DI were asked to respond based on three questions: 1) which quote did you choose as being most relevant to you? 2) Is this a reflection of current practice? 3) What are your views in reaction to this participant's feedback? Unlike the first group meeting where practitioners would discuss the topic before the recording of responses, this meeting began with recording the discussion to save time, and also a reflection that the participants would be selecting a quote pertinent to them. This led to a longer audio recording than in the previous session, and additional data around how the group discussed the topic

areas. This session captured more of the deliberation which took place, than simply recording individual responses. In total seventeen quotes from study one were anonymised and sent to the inquiry group and a total of ten practitioners attended. There were some new practitioners within the group who had been unable to attend the first session but wanted to participate within this second meeting.

4.3.1 – Theme 4: Conflict between orality and SM. The practitioners discussed a quote highlighting the essential nature of seeing victims provide live and oral testimony within the court (quote 8; appendix C, p. 219). This friction between the courts and investigators is not often discussed within literature. The participants highlighted the balance which needed to be drawn between the needs of the witness and the courts. Often the needs of the court, and the belief that the jury needed to see and hear from the witness, outweighed the use of live links (a special measure used to remotely link victims to courts) for the benefit of the witness. The following quotes illustrate this:

> *"They [lawyers] are just wanting to talk them out of it for the sake of the trial. I just don't feel they are looking at the full picture, the longer-term effect also needs to be balanced… I've heard from colleagues that there often seems to be rape victims where they [the lawyer] want them in the box"* (Participant 7, Detective).
>
> *"…It's what's best for the judge and the jury. Those are the considerations which undermine it…there is a push for a witness to give live evidence in the court…"* (Participant 8, Detective).
>
> *"We try and be as victim focussed as we can, it highlights with within this study that it's essentially to see victims giving live testimony, it's what the courts want"* (Participant 1, Detective).

This highlights a conflict between the desire by those prosecuting cases and orchestrating court procedures, and those practitioners who seek to apply for SM based on their initial assessment. This response develops the conversation around orally testified evidence, with the emphasis being around the

principle of orality which was discussed within the implementation of the YJCEA (Ericson & Perlman, 2001). This shows some conflict between orality and SM persists with the police and courts holding conflicting values in relation to the presentation of a victim within the court. This conflict between orality and vulnerability was a strong theme within this second session.

As the discussion of the disconnected nature between police investigation and the court developed, a number of practitioners within the enquiry discussed the concern that Police Officers did not understand the seriousness of giving evidence or complete a comprehensive witness assessment. Two Detectives [13, 4] suggested that the role of the Officer in the Case was often overlooked within court procedures advocates. Despite each appearing to have the same goals of achieving justice for witnesses, practitioners developed the idea of the court as a 'theatre' [Participant 4, Detective] having actors within it who have competing roles and responsibilities. This was described in some cases as the requirement of meeting the needs of the court beyond all others, be there vulnerable witnesses or not, it was felt that oral evidence was the strongest and most comprehensive in criminal trials. The impact of this for witnesses is a lack of consistency from the investigation to court phase and poor clarity for witnesses as to their vulnerability being identified and progressed appropriately through the criminal justice system.

4.3.2 – Theme 5: A lack of appropriate training. Participants described training throughout this session. There were a number of quotes about the modes of training between practical and more academic style learning. Literature often identifies the training needs as being interview skills and a focus on identifying vulnerability (Bull, 2010; Cooper & Roberts, 2005; HMIC & HMCPSI, 2010; IPCC, 2014; Ragavan, 2013). Recommendations have been made to increase court and procedural justice training (HMIC & HMCPSI, 2013). Police Officers identified this as being a problematic and resulting in poor understanding of the complete system of evidence, to illustrate:

> *"…Police Officers, and those coming in as a new detective can learn a lot from sitting through a trial and seeing how things are presented…not enough time is given to this and the result is a lack of understanding"* (Participant 13, Detective).
>
> *"…I think there needs to be a rethink on how training is presented at the start. There is still too much emphasis on the book, not enough emphasis on the practice of the law and how it works"* (Participant 4, Detective).

Research identifies that police training has changed little since the 1970's (Tong & Wood, 2011; Heslop, 2006; Belur et al., 2020) and often relies upon tacit knowing and practice (Williams & Glasby, 2010). Whilst approaches to police training have been developing under the new Police Educational Qualification Framework (PEQF), introduced in 2020 to include certain theory and practical balances (Belur,. et al 2020) the impact of this will be limited if the wider learning within the criminal justice system does not also develop. This joint training approach would benefit Police Officers and vulnerable victims alike because their journey in the criminal justice system is wiser than just policing. This wider approach must also improve attitudes to joint training between police and prosecution agencies to generate shared understandings, not just of the roles but also of the practices which sit behind both investigation and the courts. For example, interviewing is a policing practice and cross-examination is a court practice; however,

the two are inextricably linked and may involve the same person. Be that as a witness, suspect, victim, or defendant.

With much of Police Officer training being performed 'in-house' and within organisations (Heslop & White, 2012; Green & Gates, 2014), this may lead some practitioners to rely on the organisation to improve their knowledge. Practitioners identified that continued professional development is limited and highlighted that some police training is poor because of a lack of understanding by trainers themselves:

> *"…There is very little CPD…"* (Participant 13, Detective Constable)
>
> *"… I started eleven years ago, and we've hardly had any of this [vulnerability] at all. With all respect to the trainers they've had no real experience of this at all…"* (Participant 1, Detective Constable)

In some cases, the problem with vulnerability management was seen to exist within policing organisation and between departments:

> *"…I agree with some of it and I think there has been more awareness in recent years within uniform officers. I think there can be a danger within Uniform that a specialist department will pick up vulnerability because they are specially trained…"* (Participant 12, Police Officer)

Trinder (2008) identified that often evidence-based training and development fails because there is a reliance on isolated approaches to problem solving. This theme highlights a continuing problem in relation to training which impacts on vulnerability management and understanding. However, whilst highlighted as being an obvious failure within vulnerability management, the practitioners did not believe this to be a panacea to resolving the issues more broadly. In drawing to the end of this second session practitioners highlighted a wider and more contextual concern behind training, the following quote illustrates the discussion:

"...I think it gets clouded in the fact that we are 'fire brigade' police and we don't have enough thought behind that... we can have prevention work but we still need effective prosecutions and these take time and careful management..." (Participant 4, Detective Constable)

Prevention and crime control has been seen as the primary focus in some Policing areas and reducing demand to focus on governmental or policy-led initiatives can pull resources away from fundamental elements of crime and case management (Booth et al., 2017; Brown, 2017; Thomas, 2014; Walkgate, 2011). This is further explored within the third meeting of the enquiry group where practitioners discussed case law around the central issues of witness management. This second session emphasised that having discussion points, such as cases and extracts, helped draw focus and get deeper into the topic and influences around dealing with VIW.

4.3.3 – Summary: Deliberative Inquiry Session 2.

Two key themes are identified: 1) there is conflict between orality and SM. 2) there is a lack of appropriate training in Policing organisations and justice. The requirement of orally testified evidence has not changed within English criminal courts. It is evident from these practitioners that this oral concept takes precedence over witness needs in some cases. There is disparity between what the investigation may class as a vulnerable witness and those measures which are used within the court. Seeing and hearing from the witnesses is still held to be an effective measure of examining the truthfulness of witnesses. This is despite psychological research showing that observing demeanour during oral testimony is wholly unreliable as an indicator of dishonesty (Hoyano, 2007; Wheatcroft & Woods, 2010; Henderson, 2015) and other research indicating a lack of desire to move away from traditional witness experiences within courts (Ellison, 1999). This shows that SM may work in some cases with vulnerable witnesses but are merely bolted on to an inadequate and under-researched area of legal research. The second theme – inadequate training – features within study one (section 3.3.2) and continues within this deliberative

inquiry. It is influenced by poor approaches to training which features a silo approach to creating common understandings of the entire justice processes. This is influenced by traditional focusses on crime prevention work or policy-driven initiatives. These factors together may reduce the overall effectiveness of measures for VIW and create symptomatic problems of ineffectiveness. The next phase of the deliberative inquiry was to examine cases where VIW are a factor and understand how practitioners examine them in relation to practice.

4.4 – Deliberative Inquiry Session 3: Understandings of Case Law and Final Reflections

Within this final session, four weeks on from session two, and having listened to the practitioner's view that the process of vulnerability management had strong links with the process of the Courts the next stage involved understanding how these cases reflected current practice. The outcome was really two-fold; firstly, practitioners felt that vulnerability was often based on crime type and this had an impact on upon assessment and in many cases the investigator directed the witness down a particular path in terms of SM. Secondly, this can have a positive or negative effect on the response provided by law enforcement. The cases presented to the group for discussion were:

Case 1 - In the case of R v Forster (Dennis) [2012] EWCA Crim 2178, fear and distress about testifying and intimidation from the accused's family and associates was a very prevalent and important factor. This was a case of sexual violence; the accused had threatened and manipulated witnesses throughout the case. There was concern that once the evidence gathered for the initial offence had been submitted, attention was not paid to new intimidation offences (Criminal Justice and Public Order Act, 1994; s.51) with the requisite application of SM and VRE procedures.

Case 2 - In the case of R v Iqbal (Imran) & anr [2011] EWCA Crim 1348, the victim-witness was not identified as needing specialist support during the initial police evidence gathering

phase. Some months later the victim-witness was required to give oral testimony under cross-examination in the Crown Court, having provided a written statement to the police, following an incident where he was assaulted. The first Crown Court trial in 2010 was halted after the Judge became concerned about the victim-witnesses 'apparent learning and communication difficulties'. It was submitted to a later Court that he had 'significant impairment of social functioning, intelligence and communication'. The victim-witness therefore required screening from the defendant (YJCE, 1999; s.23) and an intermediary (YJCE, 1999; s.29) in order to effectively take part in the trial proceedings.

Case 3 - In R v PR [2010] EWCA Crim 2741 it was recorded that one victim of historic familial rape was permitted SM under the gateway of fear and distress of testifying (YJCE 1999, s.17). It was not identified that the victim also had a learning disability resulting in an inability to comprehend complex questions. In order to facilitate this victim's participation an intermediary was required. However, an intermediary cannot be afforded under s.17 of the YJCEA (MOJ, 2011). Whilst a matter of law for the court to determine a witnesses competence (YJCE 1999, s.53 & s.54) the presence of a learning disability would have allowed a Special Measure gateway under s.16 (YJCEA), therefore submitting a witness' evidence to a court under s.17 YJCEA will equally disadvantage witnesses who would otherwise have benefitted from measures available under s.16 YJCEA 1999.

Case 4 - This the case of an 81-year-old female who was repeatedly raped (Sed v R [2004] EWCA Crim 1294). Medical evidence corroborated the offence taking place, it was found during the initial stages that the victim was suffering from dementia. Specialist VRE was obtained and whilst clearly not applicable under the gateway of age, the SM was applicable under s16 (2) YJCEA – intellectual impairment. Without doubt the Sed v R case involves a vulnerable victim;

crucially the vulnerability was defined early in the investigatory process and dealt with under the appropriate YJCEA gateway.

Within this session the practitioners were asked to respond using a case in the discussion on answering three questions: 1) is this type of SM application seen in practice? 2) How could some of these complications have been overcome during the initial investigation? 3) Are there any similar experiences you can share with the group/research? These cases were chosen due to the significance attached to the outcomes which is described within the case summaries. As with the second meeting this session was predominantly attended by Police Officers and Detectives.

4.4.1 – Theme 6: Ownership and Case Management. The discussion began with a general focus on witness difficulties leading up to trial and the late way in which some witnesses were informed of the need to attend court. It was felt to have resulted from a lack of ownership around the management of witnesses. Research has indicated that case management and case file preparation is a large area for development within procedural justice (HMIC & HMCPSI, 2013; CJJI, 2015; Leveson, 2015).

Practitioners were invited to answer questions or interact with the stated case law in any way they felt appropriate. A Detective [9] began by saying:

> *"For me it's the Police understanding of the Special Measures that are available and for some officers, they will do the ABE assessment and recognise that, others don't recognise it can be done and don't realise that special measures are available and what can be done and what category. They just think, ok I need a statement and quite often I've seen people taking a written statement where it should have been a video interview and this is often completely missing from the casefile…"* (Participant 9, Detective Constable).

Practitioners added further examples and some case specific contexts which further identified that often non-specialist departments were the root cause of some issues around SM and VIW's, and this is illustrated in the following quote:

> *"…Recently I have seen a case of a sergeant and a bobby on the beat and the Sgt made the decision to get a written statement from a victim of a child sexual offence and the lack of understanding is totally there…"* (Participant 6, Detective Constable)

Charles (2012) and CJJI (2015) both identified that in some vulnerability cases the case management was worse. It could be identified that VIW cases require more time to be invested in case management. A Detective qualified some of the barriers to the assessment of witnesses, and indeed vulnerability, within the context of significant time and deployment pressures. To illustrate:

> *"I think it's the time pressures sometimes. They [Uniform Police Officers] are conscious of the need to get the inquiry done.... then taken a statement as its quick but have never really done any through questioning around that person and never checked around medical conditions, mental health issues or anything like that, likely because they are being pressured by other jobs stacking up"* (Participant 8, Detective Constable).

This discussion highlighted namely two different issues. Firstly, around the choice of SM being with witnesses; when time pressured, the decision as to how to record the evidence, either by witness statement or video, are influenced. This is minimally identified in previous research (HMIC & HMCPSI, 2017; NAO, 2011; CJJI, 2015). Secondly, there is disparity between knowledge around the taking of a witness statement and then the subsequent effect this has on criminal proceedings. Police officers have a significant role to play in shaping the relationship between the 'deserving' and 'underserving' status of firstly being a victim and secondly in gathering evidence (Charman, 2019). However, the pressure of policing is clear in the above illustrated quote, the main inhibiting factor is time. The issue might then be

shaped around which cases and which victims receive the most policing time and ultimately this may boil down to who deserves and who does not deserve the time of the police investigator to examine their case to the level of detail which is likely to be demanded by the court. Ultimately, this might be down to the type of crime which is now described within theme 7.

4.4.2 – Theme 7: Vulnerability by Crime Type. Within the discussions around the type and nature of vulnerabilities this last session felt the most reflective for practitioners. Detectives began to discuss Case 4 – the rape of an elderly woman. This commenced a discussion around vulnerability by crime type. This effect is unexplored within much of the vulnerability literature around VIW and SM as the following quotes illustrate:

> *"…one difference is that one case is volume crime and the other is major crime….* (Participant 8, Detective Constable)
>
> *"… [The case of] an 81-year-old might be a victim of an offence and she is going to get that support because she is a victim of a sexual offence. But if this is someone who is a victim of say, a lower level Crown Court case, say an ABH then they wouldn't necessarily get that additional support would they, so that's maybe where its being missed…"* (Participant 6, Detective Constable)

Brown (2017) and Aihio et al. (2017) indicate that describing vulnerability by incident type can create over-inclusive or discriminatory categories. The practitioners within this research describe how this might influence case management. What emerges is how some vulnerabilities may become hidden, and therefore not discussed within mainstream policy or legal doctrine as ascribing to vulnerability. Labels such as 'volume crime' and 'major crime' create allocated responses and have a bearing on the type and delivery of services to witnesses. This can create a tiered system which was described by the participants within this study. This was is not always an obvious relationship for practitioners. Practitioners stressed that although all crime types were important to examine, there were some that had to be of a higher priority,

although even in higher priority cases there were problems. Practitioners indicated that it was unhelpful to look at vulnerability in relation to crime type but often organisations and governments did so. A Detective [6] emphasised that:

> *"…in some witness intimidation, not linked to the original index offence, then your mind-set is probably thinking that well the special measures are already in, so that will capture the potential intimidation offences. We are seeing more and more intimidation offences coming through but less special measures assessments because it's not seen as being linked…"* (Participant 6, Detective Constable)

Practitioners went on to describe that many forms and processes can be designed for major crime types (e.g., murder, rape) but in many cases these forms were burdensome and did not reflect the type of assessment needed for all witness. Attempting to manage vulnerability in this way could create inaccurate lenses of vulnerability and organisations often silo vulnerability (Asquith et al., 2017; Stanford, 2012). Training manuals around vulnerability are often organisationally and situationally based (Cooper et al., 2018; Majeed-Ariss et al., 2019) this may have instigated investigators to see vulnerability in a narrow lens, thus creating disparity between crime types.

On further reflection around these cases the practitioners began to draw down further how the defining of vulnerability to crime type was perhaps a dangerous and limiting effect upon the overall response to crime as the following quotes illustrate:

> *"…if it was a knife crime or a sexual offence you immediately start thinking down that other route. Do I think that other new offences are always considered and special measures applications reviewed as a result, probably not…"* (Participant 8, Detective).
>
> *"I think special measures should not be about the category it's about the person, and if they are vulnerable or intimidated, not the type of crime"* (Participant 6, Detective Constable).

Within the understanding of this inquiry session there is a reflection of the defined characteristics of the YJCEA (1999); in that, victims of sexual offences, knife crime and domestic violence are automatically eligible. This appears to be reflected within practice, meaning practitioners see these types of crimes as being where vulnerability exists more commonly. This has a strong relationship to research around inclusive and discriminatory barriers (Brown, 2017; Aihio et al., 2017). This influences the understanding of vulnerability by providing circumstances unto which practitioners may consider people as being inherently vulnerable. There was also evidence that some vulnerability receives a 'one-time' assessment based on the type and nature of the crime, and again this contributed to missed understanding and absent applications in some cases.

4.4.3 – Theme 8: Poor YJCEA Understanding. Practitioners described how many people were not aware of the difference between s.16 and s.17 YJCEA (1999) - where only certain measures can be applied for each dependent on the initial assessment. Practitioners began to draw on case 3 - familial rape victim permitted SM under the gateway of fear and distress of testifying (YJCE 1999, s.17). This case has a broader point around the effect of defining by a crime or incident category. Practitioners felt that a single assessment with little work to review could lead to potentially limiting effects for the witness around the application of SM. A Detective highlighted:

> *"…I don't think that we always go back and review it [SM] and think actually that this person is also suffering as a result... I think it's probably only looked at too late... I just don't think that the review of the special measures application is done. That's not taken into consideration or they are inaccurate categories…"* (Participant 8, Detective)

The results here support Burton et al. (2006) who identified that vulnerability existed on a spectrum and often practitioners did not identify this resulting in some SM being misplaced as a result. Practitioners felt that a more integrated relationship between investigator and the Court would improve this. With an

open dialog between witnesses and investigator throughout the entire investigation and court process. One inhibiting factor to this was described by most as being the capacity to have a single point of contact for witnesses during the entire process; often witnesses would speak to multiple professionals and often the services overlapped and contained multiple assessments which were ineffective. The following quote illustrates this:

> *"…for me as well there needs to be some kind of meeting. I know they do it for murder and stranger rapes and all those kinds of things but for the high profile cases they have meetings early doors but to me, the police and witness care and the CPS need to get their heads together…screens, live links can be sorted and we need to speak clearly about what the vulnerabilities are from the outset and be clear with the witness…"* (Participant 6, Detective).

The conversations seemed to come to a natural end with practitioners describing that vulnerability based on crime type often had a limiting effect on the response and lens at which some precedent is set for the investigation which follows.

4.4.4 – Summary: Deliberative Inquiry Session 3. Three themes are identified within session three: (1) ownership and case management; (2) vulnerability decisions are often led by crime type; (3) problems around gateways to the YJCEA. Leveson's (2015) large scale review of case management identified issues in relation to VIW management and cases. Other research (HMIC & HMCPSI, 2013; CJJI, 2015) identified case management as presenting a recurrent issue. However, case management is heavily influenced by time pressured decision making, which undermines witness's choices in how they provide witness evidence. This is related to a lack of understanding amongst non-specialist investigators. A finding that vulnerability is identified by crime type supports previous findings (Brown, 2017; Aihio et al., 2017); however, unlike previous research these results challenge the idea that creating policy specific responses to crimes is beneficial to witnesses.

There are clear indications that some VIW's are failed by a lack of recognition by practitioners that their crime merits vulnerability recognition. Whilst in these sessions' practitioners find they are themselves a victim of an organisational and governmentally secular approach to discussing vulnerability. Bartkowiak-Theron and Asquith (2012) identified that often organisations use different language to describe the same individuals which causes confusion within the vulnerability landscape. The findings indicate that practitioners often misdirect SM due to confusion about the two gateways (s.16 and s.17 YJCEA). Burton et al. (2006) identified this as being a regular problem concerning SM. However, the results here indicate that this is also influenced by crime type. These three themes, considered together, indicate that practitioners do identify issues within practice and indicate how these could be changed by amending the landscape to become less about crime type to one involving greater ownership and common ground between crimes with a better approach to vulnerability assessment.

4.5– Conclusion of the Deliberative Inquiry

Practitioners came to a consensus that vulnerability continued to be problematic for criminal justice and the following themes are identified from this consensus: (1) practitioners make decisions on vulnerability based on non-verbalised information; (2) practitioners perceptions on vulnerability is based on credibility; (3) there are failures between agencies to jointly and consistently assess vulnerability; (4) case ownership is poor around vulnerability; (5) there is a lack of joint practitioner training and there is a lack of understanding around the YJCEA gateways; (6) vulnerability is often based on crime type; (7) there is conflict between traditional cross-examination (orality) and SM. Practitioners emphasised that the direction and focus of future training and police-making should therefore consider cross-referencing characteristics between crimes, not simply arguing that one crime presents more vulnerability than others. The effect this currently creates is the perception that vulnerability does not exist within certain, less serious, crimes. Implying that some crimes are inherently complex may also mean that some initial

investigators rely on specialist departments to conduct assessments or identify vulnerability. From the outset this creates an irregular system in which vulnerability could be misidentified or missed completely. This is also highly relatable to mindlessness – *"mindlessness may result from a single exposure to information. When information is given in absolute (vs conditional) language, is given by an authority, or initially appears irrelevant, there is little manifest reason to critically examine the information and thereby recognize the ways it may be context dependent. Instead, the individual mindlessly forms a cognitive commitment to the information and freezes its potential meaning"* (Langer, 1992. P.1; Langer & Piper, 1987; Thomas & Inkson, 2003; Langer et al., 2010; Palmerino et al., 1984).

These findings support research suggesting that most investigators and Police Officers are unfamiliar with the court process and this results in poor court applications for SM (Kebbell et al., 2007; CJJI, 2015; HMIC, 2015). Assessments of a witness's credibility must be considered within all criminal investigations (Wilson, 2003; Sprak, 2015; Doak & McGourlay, 2012; Beckene et al., 2020). However, these findings indicate that practitioners believe this relates to beliefs about 'ideal' victims or witnesses; presumably those who are not vulnerable being preferred to become witnesses. This creates a challenging concept to overcome as many crimes involve VIW's. Credibility is a function of the legal discipline, offering that credibility is linked to VIW supports findings (Jay, 2014; Fiedler, 2019) that VIW's can be adversely affected by ill-informed decisions on credibility. The belief that a witness is less credible because they are vulnerable supports the implication of poor understanding as to how credibility assessments may operate (Fiedler, 2019). Assessment based on perception are often poor quality (Tepin, 1984; Majeed-Ariss, et al., 2019) and can be symptomatic of empathy fatigue (Stebnicki, 2000; Turngoos et al., 2017; Anderson & Papazoglou, 2015). The next chapter reports findings from the interviews. Interviews were conducted with practitioners who did not want to be involved with the DI due to time commitments, unwillingness to participate with a group discussion, or opting for an interview form of participation.

Chapter 5 – Study 3: In depth practitioner experience using interviews

The aim of this chapter is to discuss the findings from study three - semi-structured interviews, these importantly provided access to participants who did not enrol in study two, the deliberative inquiry. The method chapter (Ch.2) set out four questions arising from the initial objective of the overall research: 1) How do practitioners relate to research on vulnerability? 2) What informs vulnerability understandings at practitioner level? 3) What emerges when practitioners describe vulnerability and responses to vulnerable, intimidated witnesses [VIW's]? 4) What can improve responses to VIW's? The chapter sets out the method and participant selection for these interviews before presenting the findings and analysis. The findings from study two were: (1) practitioners make decisions on vulnerability based on non-verbalised information; (2) practitioners perceptions on vulnerability is based on credibility; (3) there are failures between agencies to jointly and consistently assess vulnerability; (4) case ownership is poor around vulnerability; (5) there is a lack of joint practitioner training and there is a lack of understanding around the YJCEA gateways; (6) vulnerability is often based on crime type; (7) there is conflict between traditional cross-examination (orality) and SM. The method of the study is now introduced.

5.1 –Method – Study 3: semi-structured interviews.

The interview schedules were drawn from study one, the parallel deliberative inquiry sessions, and the four questions arising from the initial objective outlined above. These interviews were important within the method triangulation and to give potential participants an opportunity to contribute having opted not to take part in the deliberative inquiry. This design therefore gained wider perspectives, than simply police practitioners, and supported the four-fold interaction cycle (Heron, 1996) and Critical Realism approach (for a full outline, see Ch. 2). The merits of this approach add value by allowing the utilisation of themes to be developed between the simultaneous deliberative inquiry and phases; this, allowing discussion points, clarification questions and focus for subsequent interviews and deliberative inquiry.

5.1.1 – Sampling and data collection – Study 3. The participants were primarily identified following an e-mail and social media circulation to be involved within a deliberative inquiry surrounding the issue of VIW's. The circulation was made amongst police, Criminal Justice and specialist witness practitioners who then either elected to take part via an interview or were unable to attend the deliberative inquiry sessions so were offered an interview. The deliberative inquiry took place from November 2017, and the Interviews commenced in January 2018 and were concluded in June 2018 along with the deliberative inquiry. Fourteen interviews were undertaken with practice areas of: Uniform Police Officers, Detectives, Prosecution Lawyers, Defence Lawyers, Intermediaries, Specialist Advocate Services, and Interview Specialists. The participants were from two non-metropolitan police forces in the UK. The interviews were all audio recorded and participant consent explained prior to the interview. Participants were informed that their responses would be anonymised and used as quotes within the deliberative inquiry, then directly included within any presentation of findings.

5.1.2 – constructing measures and questions – Study 3. There were broadly four main question groups: (1) perception of characteristics concerning vulnerability in relation to witnesses – this included any examples the practitioner could provide; (2) views on the way in which other agencies and practitioner's became involved with VIW and if any assumptions are made in respect of the types of vulnerability encountered; (3) observations on the way in which vulnerability is communicated between practitioner's and agencies; and (4) observations of risk assessment models and training. Practitioners were then asked at the end of each interview about any overall reflections regarding VIW management and vulnerability. The full semi-structured interview schedule can be found in appendix: A (p. 214). The construction of the questions related to findings from study one and originate from the aims of the study highlighted within table 1 (p.16). With the aim of this study being to boarded responses and increase participation, the schedule was kept short to maximise participant engagement within the interview.

5.1.3 – Data Analysis. The analysis of this data was performed using thematic analysis (TA: Braun et al., 2014). These themes were developed independently of those within the deliberative inquiry; therefore, representing the findings of the interview only and not those within the deliberative inquiry. TA offers a comprehensive fit with the data generated through interviewing and group work and sample sizes can be smaller. However, it has been described as "lacking kudos" unlike grounded theory or other forms of analysis (Braun & Clarke, 2006, p. 97). However, the meaning which can be derived from coding and analysis offers logical and important conclusions which is not associated with distinct epistemological positions but a clear and logical process (Braun & Clarke, 2006; Boyatzis, 1998). This means that TA is compatible for realist paradigm. TA is thought to work best where the researcher is an integral part of the data, study and coding process as is the case within this thesis (as outlined within section 2.1.3.1). The process of TA has been developed to offer an extensive fifteen-point checklist detailing the criteria for good TA (Braun & Clarke, 2006). The key points from this are: full transcription of the data by the researcher, offering a second chance to interact with the data and draw out meaning; equal attention to each lines of the data and notes made on the meaning and codes developed, these will be checked against each other and again back to the data set; arranging the data in order to tell a story and illustrate the analytic claims. Braun and Clarke (2012) suggest that in a large data set only six to eight codes may emerge and the researcher should not try to develop codes where the data simply does not exist. This is avoided where themes are re-checked against the data to ensure coherence, consistency and that each are distinctive with individual meaning. The data and codes in this thesis are contained within in chapters 4 and 5 which provides an emphasis on the story of both the data and the codes which were developed during this research.

5.2 – Results and Discussion – Study 3.

The key themes emerging from these interviews are: 1) practitioners assume vulnerability and risk; 2) vulnerability is defined in practice by crime type (Sub theme 2a – vulnerability is affected reliability and frequency); 3) vulnerability is miscommunicated and practitioners become fatigued; 4) orality and the missing intermediary; 5) Training is poor and inconsistent. Research often implies that risk and vulnerability are intrinsically linked (Herrington & Clifford, 2012; Stanford, 2012; Gibbs, 2018) and often those classed as extremely vulnerable or presenting the most significant risk will be presented as training material to understand risk and vulnerability (Bull, 2011). This supports previous research around those often typified as being vulnerable (Brennan et al., 2010). The following themes extracted from interviews and supporting quotes are now discussed.

5.2.1 – Theme 1: Practitioners assume vulnerability and risk. In many interviews' practitioners accepted that in most cases there were assumptions made about a person's vulnerability and the levels of risk. This is directly supporting study one results in which practitioners accepted that often vulnerability was assumed and not assessed (Section, 3.2.1 – p. 79). Practitioners spoke often about how vulnerability and risk was assumed and not often accurately assessed, to illustrate:

> *"We therefore, the investigator, the response officer, we make the decision for them [the witness]. It becomes descriptive and silo approach to Policing and investigation and often assumptions are made based on what people see".* (Participant: 9, Interview Advisor)

> *"There's almost kind of that assumption there really that there is not that capacity or that ability to take things forward, it's difficult. For people who are disabled there can be a lack of progress around crime to take things forward"* (Participant: 11, Specialist Advocate)

The practitioner [11] went on to describe how this can be potentially limiting to operate in a singular way. For example: describing someone as having a learning disability, even though they were

perfectly adapted to operate within society and had appropriate resilience in managing their disability. Often a determination of risk can simply emerge from a perception of vulnerability or vice-versa. The sense that vulnerability intrinsically sits with inherent risk can imply that it is burdensome and too complex to manage (Bartkowiak-Theron & Asquith, 2012), and may inhibit some responses or an organisational appetite to make necessary changes. I interpreted this to mean that the making of a decision based on some initial assumptions by the investigator around vulnerability myths, this is best illustrated here:

> *"I know we still get these situations where someone's vulnerability isn't recognised, and people act in good faith but without realising that they should be calling a specialist or at least asking for some advice. There are all kinds of myths out there, like myths about vulnerable adults for example… People think there are all kinds of arbitrary ages…"* (Participant: 3, Police Training Officer)

> *"…I think that historically they [VIW]…. are not what we would describe as the 'strongest' of witnesses… I think historically we would look at the extremes. Where you have issues of extreme violence, or extreme level of criminality. I think the general understanding has been that [SM] is to cater for the extreme level of criminality…."* (Participant: 6, Detective)

This can manifest itself based on the attachment of previous labels, like for example: vulnerable adult, vulnerable child, vulnerable person. In the quotes above, both the Interview Advisor [9] and Police Trainer [3] describe the effect that the attachment of these labels or myths had on the direction of cases. Often myths about crime, for example domestic abuse, have negative consequences for victims and suspects alike, often due to ill-conceived or misunderstood training, or ill-informed, in-house research (Gibbs, 2018) which professionals rely upon because they are more readily accessible and easier to form understandings (Trinder, 2008). Numerous practitioners described that there are potentially vast numbers

of people within the population who may be described as vulnerable without basis, evidence, or a determined diagnosis. To illustrate:

> *"I certainly have had some clients who are alcoholics or have been alcoholics or drug addicts and I think their name, as soon as they're arrested….I find that they are not taken as seriously as maybe somebody who's unknown or somebody who's in a job or whatever does seem to be…".* (Participant: 10, Defence Solicitor)

> *"We all know the definition of vulnerability. It's an accumulation of your experience. It's about knowing the impact factors, some people are just on the system as vulnerable….they tend to be a one size fits all".* (Participant: 2, Detective)

Here, the assertion is that assumptions and stereotypes are affecting decision making, which then forms a key part of the police assessment. In effect if everyone is given a label of vulnerability, then it risks desensitising practitioners to the risk and needs of those who are most vulnerable. Simply labelling or assuming vulnerability due to alcohol consumption, age, or social circumstances is a narrow basis on which to examine vulnerability, but this is one on which practitioners experience within practice. This does however have a relationship with assessing vulnerability based on crime type. These assessments could then be shared and significantly informed the involvement and requirement of other support mechanisms. This moves away from previous concerns in relation to single phase assessments or those which hinge around a person's position as a suspect, victim, or witness (Teplin, 1984).

5.2.2 – Theme 2: Vulnerability is defined in practice by crime type. Many practitioners chose to mention the type of crime as strong indicator of vulnerability; examples included: domestic violence, sexual violence, and serious assaults. When describing the types of responses to so called 'vulnerable populations' there was unanimous agreement amongst practitioners that domestic violence was a situation where a person would be vulnerable; this view predominantly emerged because of initial training. Crimes

such as domestic abuse often receive more attention in policy and research, creating the effect of being most serious and in most need of a solution (Gibbs, 2018). However, practitioners described that often the same processes were not adopted for crimes despite them being considered indicators for vulnerability. This can mean that other crime types are less deserving or less associated with vulnerability. In discussing the process of assisting a witness with SM, Police Officers described the difference between crime types and what support might be offered to some witnesses as the following quote best illustrates:

> *"... you can have vulnerable people in domestic [abuse] circumstances, vulnerable people in terms of age, or the elderly, people who are intimidated by a certain situation but an assault or something, like a type of crime, they are intimidated by the situation so they become vulnerable, some support depends on what they're a victim of..."* (Participant: 12, Police Officer)

The Police Officer went on to describe how other agencies and services such as Witness Support and Independent Sexual Violence Advisors (ISVA) would become involved with some witnesses. However, whilst the majority of Police Officers, Detectives and lawyers described vulnerability around either victim or perpetrator, few saw that the vulnerability was interchangeable between roles and other crime types. This supports that often vulnerability can have over-inclusive or discriminatory categories (Brown, 2017; Aihio et al., 2017). This theme also features within the deliberative inquiry results (Section 4.4.2, pp.116-118). The consequences of crime type being an indicator may also have negative impacts on the victim's ability to feel independent within the process of giving evidence. A Police Officer described how some rape victims do not feel they should be typified as vulnerable, despite the YJCEA indicating that they are automatically eligible for SM, there was also a concern that some witnesses may be patronised by the experience of being classified as vulnerable and a quote to best illustrate this is was:

> *"Rape victims you automatically think they are vulnerable because of what they have been through. Some rape victims don't need all that. They say they don't want all that, they say they are quite*

strong people, or they say that they are not as vulnerable. Or they say that they are not vulnerable…. I suppose, if we are going into it and that people are all vulnerable when you are going into it then you may think they you need to put more into it than a normal witness. But then at the same time if you're speaking and dealing with a victim as if they are vulnerable then it may get a little bit patronising" (Participant: 12, Police Officer)

In addition to the deliberative inquiry, the theme is developed further as the practitioners also describe the consequences for labelling a witness as being vulnerable, simply due to crime type. This may limit the control for witnesses to decide on a choice of SM, or have this approach explained to them, where an investigator decides, based on crime type, that this is not appropriate. This has been described as iatrogenic (Bartkowiak-Théron & Asquith, 2017) and is systematic of mindless approaches to vulnerability in accordance with a single indicating factor, in this case crime type. In making assumptive conclusions, without assessment, this is further symptomatic of a wider and mindless approach (Langer, 1989; Langer et al., 2010; Palmerino et al., 1984). It is highlighted that in some cases being classed as vulnerable removes individual resilience and ability (Brown, 2011). To simply define that all rape victims, in this example, are vulnerable seems to offer an over-inclusive narrative which can have negative impacts for the witnesses themselves and creates isolated pools of practice around a limited scope of offences.

5.2.2.1 - Sub theme 2a – vulnerability is affected reliability and frequency. Whilst practitioners spoke about crime type being strongly related to vulnerability, this focus was often related to the frequency of repeated calls. Unlike the findings within the deliberative inquiry (Ch. 4) around credibility, the discussions within the interviews were more confided to examples and consequences for witnesses and victims. Often for a perpetrator, who then falls victim to a crime, the lens of reliability and credibility for the purposes of criminal proceedings and many practitioners described this as being problematic, the following quote best illustrates this:

> *"I worked with a gentleman who was incredibly vulnerable, he was well known to the criminal justice system, he was well known to the Police, he had perpetrated many crimes. He was labelled with a learning difficulty…he has alcohol misuse and mental health difficulties. He was well known as a perpetrator for crime and because of that these so-called friends took advantage of him. There was a huge error here because he was such a victim…assumptions are made and often this is about people who are vulnerable…."* (Participant: 1, Specialist Support Worker)

This was inherently based around the position of a person in formatted reports or in relation to an investigation. In one interview with a Detective (participant 13) managing Domestic Abuse reports they described how the allocation of either 'victim', 'witness', or 'suspect' within the early stages of establishing facts became hugely detrimental when trying to establish what support was needed and who was indeed most vulnerable, indicating that:

> *"The way the report[s]set up – which is perhaps not ideal – you have to input a victim or a suspect and often if you have been a suspect before it's easier to be labelled like that again…sometimes they are not treated the same… its confusing for most officers"* (Participant 13, Detective).

The nature and content of the written communication within reports was described as confusing because of the need to place persons within a specific role; this in turn affected the outcome of any later

assessment. It is emphasised that this type of approach may lead to disengagement from some vulnerable groups (Fyfe & Smith, 2007). This could also lead to disparity in the approach to investigations where the categorisation is misdirected or incorrect.

There was a clear indication throughout many practitioner interviews that the attachment of a role within a case had a bearing around how the vulnerability was perceived. Some of the problems associated with witness assessments came down to the way in which material had been prepared through the investigation surrounding vulnerability. Defence advocates mainly discussed this and described the ease at which some witnesses could be undermined where proper assessments had not been made, the following quote illustrates this best:

> *"... [in a case where the victim was previously a suspect for other crimes] a little bit of investigation on Google showed that she had been involved in the court process before actually at her own instigation. So, I was able to just print that out, send it back and say, 'we'll be opposing this' [application for SM] ..."* (Participant: 10, Defence Solicitor)

This brought the issues around dealing with vulnerable witnesses back to the matters of the disclosure. It is found that most police investigations failed around disclosure rules and, in turn SM, because adequate provisions were not afforded to specifically identity previous material which may undermine a person's credibility (Sprack, 2015; Fiedler, 2019; Maras et al., 2019). One way in which this has previously manifested is around victims of child sexual exploitation (Jay, 2014) where often someone's role as a perceived perpetrator led to reduced belief in their witnesses account and provisions for vulnerability measures. This may additionally impact on people's confidence to report incidents to the police. This links with the wider themes around crime type and perceptions on credibility. These may have a direct impact on the number and quality of SM applications.

5.2.3 – Theme 3: Vulnerability is miscommunicated and becomes fatigued. In developing a response to vulnerability, one of the themes within the data was around the capacity within some organisations to be able to deal with the number of reports or referrals about someone who was considered vulnerable and how this was often miscommunicated. Practitioners described some referrals created a culture of sensitivity around vulnerability which led to increased demands without real benefit to individuals, the following quote illustrates this:

> *"…People assume that when they put in a domestic abuse report, vulnerable child or adult report that children's services will become involved. Whereas in reality children's services will probably become involved with less than 15%, so it's getting officers to understand that just because you've submitted this report does not mean that it will meet the threshold for other agencies to be involved…".* (Participant: 13, Detective)

The detective highlighted that although key agencies (e.g. Health, Education, and Social Care) received referrals there was often a problem in co-ordinating support, especially where a report was 'screened' out having not met the criteria. The information then sits within police systems, this additionally undermines the principles of joint working. This is a potentially limiting method for some people where the support required may be minimal, or where the information held, would be better directed to other third sector agencies. This was not discussed specifically in relation to witnesses but was something which can be correlated within the discussions around building some context of a person's vulnerability. Practitioners often fell short of saying that they sometimes do nothing in relation to some cases of vulnerability. This could be due to the understanding as to how the interview data would be used, or indeed how this would be later perceived. However, it is found that in some vulnerability cases the appropriate support may not follow in some referrals (Bartkowiak-Theron & Asquith, 2012) and it is likely that a similar effect exists for SM

This poses the question of why information concerning people's vulnerability is captured if it is not used to assist in some measures to support them. To continually operate within this way demonstrates a culture of mindless activity (Langer, 1989; Langer & Piper, 1987; Thomas & Inkson, 2003; Langer et al., 2010; Palmerino et al., 1984). This is best illustrated in the following quote:

> *"…there's a lot and it's a presumption that things are how they were last time and that nothing has changed, potentially they are actually giving us information about their ongoing knowledge of a family rather than basing it on the current circumstances. I think it's obviously relevant to bring into it what's happened previously, but also, we need to have the facts of the specific incident. The frustration of "why are we here again" and "what are we ever going to do to resolve this situation".*
>
> (Participant: 13, Detective)

This type of culture within the communication of vulnerability may limit or alter the lens in which the vulnerabilities of the person exists. The existence of several reports may only indicate adherence to an organisation requirement, not indicate real or substantial information to support assessment. This may also be one of the limitations of repeating the same standardised risk assessment (such as Domestic Abuse Stalking and Harassment) in a continual process, and on each attendance by criminal justice practitioners. The communication may therefore become limited or misdirected depending on the interpretation of the events at that time, and the number of previous reports.

Practitioners often described how the construction of some reports using 'victim' and 'offender' relationships were particularly damaging within domestic violence reports. Practitioners often discussed the disparity between male and female roles as victims and suspects, highlighting an unequal approach, the following quote illustrates this:

> *"You most definitely see that female offenders are not dealt with in the same way as male offenders. They are taken less seriously when there is a female offender, the vast majority are male offender*

and female victim. Just not quite taken as seriously, there are cases that come through where a female has held a knife to the male and it comes through as a standard risk report, if this was a man that had held a knife to a woman it'd be high risk". (Participant: 13, Detective)

Practitioners also described the disparity which exists between the use of SM for witnesses and defendants. This could be due to fewer applications being made for these types of witnesses or that this is symptomatic of their limited use in practice. The practitioners described how often significant investment would be placed within interview suspects, the same attention was not afforded to witnesses or SM, as this quote illustrates:

"A lot of the time you see that a lot of effort has been put into the defendant interview but the same cannot be said for the victim. There are specialist officers for the suspect interview and seemingly a lot of planning, but then for the victim this is not the same and really that should be avoided…I would like to see some sort of evidence so if somebody is saying that they're [witnesses] so stressed that they wouldn't be able to give the best quality of evidence without screens or on a video link, something from the doctor, a doctor's note just to say that they've been prescribed whatever, they haven't been sleeping for weeks, to me that's evidence". (Participant: 10, Prosecution Lawyer)

These interviews show a strong and broad agreement within practice that there remains an unequal level of investigative activity between those labelled 'suspects' and those seen to be 'victims' or 'witnesses'. Research indicates that defendants should be included for consideration in SM (Plotnikoff & Woolfson, 2007; Oxburgh et al., 2016).

The issue concerning the process of risk assessment is highly subjective, and there is a clear relationship here between the perceptions of how violence, and therefore vulnerability, exists within intimate relationships. This inherently has an impact where a number of previous 'reports', shows the perpetration of violence in one direction or another. This may present a real issue in directing support, or

if the information were to be disclosed in any criminal proceedings, could have some effect on the view that the witness is credible. This was however not unique to gender, with the same Detective describing how reports of older children (16/17yrs) would be categorised lower risk compared to those much younger (5/6yrs), even though the basis of the perceived risk, or crime type, may have been the same. These types of responses highlight the weaknesses in applying risk assessment frameworks or making any reliance upon them for statistical recording where vulnerability is concerned.

A Defence lawyer (Participant: 10) described situations whilst representing clients, who had been subjected to numerous risk assessments, they instead presented lower risk because they had been: *"…able to cope."* (Participant: 10). These resilience factors were therefore determined to have a real impact upon assessment and where standardised risk-assessments were simply viewed as a checklist process, this lowered their overall impact. This is again symptomatic of a mindless approach to vulnerability (Langer & Piper, 1987; Thomas & Inkson, 2003) where form filling emerges as burdensome to engagement and problem solving. Practitioners described how the existence of information, held about a person, contributed to their vulnerability; particularly, where practitioners made assumptions based on these previous reports. The following quotes illustrate this:

> *"There's just a presumption of certain factors which have appeared in the first incidents. Less information is then provided because people think well, I know them inside out so everyone else must. That's one of the difficult things really because they forget that other agencies can only see the information that they put on the form".* (Participant: 13, Detective)
>
> *"….it doesn't matter if you go to a domestic the first time you go to one or it's a regular domestic, if that makes sense. Either way they are still vulnerable, so the report goes in…"* (Participant: 12, Police Officer)

This culture seems to be embedded particularly within Policing with a particular focus on gathering endless information to satisfy organisational or data gathering requirements. Some participants described how repeated referrals to other agencies lacked the context of previous matters especially where partitions were becoming fatigued with continued attendance. Empathy fatigue is described as a process of repeated contact with traumatised individuals, where, far from bias, the fatigue operates to simply assume that the values of this new situation are repeated from the previous one (Stebnicki, 2000). This, alongside mindlessness, operates in practices where lots of information is assumed and has become context dependant (Langer, 1989; Langer & Piper, 1987; Thomas & Inkson, 2003; Langer et al., 2010; Palmerino et al., 1984). Empathy fatigue can emerge where practices are inherently based around tacit knowledge and exist in higher risk environments and vulnerability (Stebnicki, 2000; Turgoose et al., 2017; Andersen & Papazoglou, 2015) and these theories are supported in the findings.

5.2.4 - Theme 4: Orality and the missing intermediary. Practitioners described some poor responses around appetite for the use of SM. An Interview advisor described how *'appetite, cost and ignorance'* were three factors which held back the progression of measures to support witnesses, and stated:

> *"…Special measures are wrongly, wrongly, explained at the beginning of the process a lot of the time. I think in the Policing environment you will hear the phrase "oh don't worry, no one will see your face, or you can give your evidence by camera; that type of thing… You can unrealistically raise the expectations of a witness. "Don't worry you'll never have to go to court" "don't worry we can do your evidence on video". They just don't understand. "You'll have to be video recorded". We [the investigator] make the decisions for them".* (Participant: 9, Interview Advisor)

A lawyer working on Prosecution cases also supported this. The lawyer raised questions as to the decision making behind the video recording of a witness's account, or indeed why a written statement had been taken:

> *"I'm not sure how I'd really describe this, in some cases there is real under assessment, there's no framework that can be seen and no workings out as it were. Why has the person been videoed or why has a statement been taken and do they plan on getting further statements. I think the difficulty comes where there has been no assessment and there is just simply a statement. You can see that yes, the incident has been traumatic but does that really have an effect on the evidence or is it just a factor in the case…We have to rely on their presence from the prosecution to get their account heard. If they break down and cry, then its better the jury see that in the box."* (Participant: 4, Prosecution Lawyer)

This links to findings within the deliberative inquiry (section 4.4) where orality and presence in the court is held by legal practitioners as being more prudent to the case. There is therefore a direct contrast between the desires of legal practitioners and investigators in relation to how SM may operationalise in relation to witnesses, and the process of giving evidence. This is despite research indicating that there is no direct improvement, or enhanced belief of a witnesses by juries, where SM are used (Ridley et al., 2015; Ellison, 1999). Research has consistently shown that observing demeanour during oral testimony is wholly unreliable as an indicator of dishonesty (Hoyano, 2007; Wheatcroft & Woods, 2010; Henderson, 2015). Bartkowiak-Theron and Asquith (2012) suggested that countries often use the same language to describe the same individuals. This theme identifies that similar professionals operate in the same way but apply different meaning.

This also raises the important matters arising from dealing with witnesses and their interviews with the police. The Interview Advisor was also asked about their final reflections around future developments

of the YJCEA in relation to assisting vulnerable witnesses. They cited how current pressures around Policing and the Courts systems was helping to create a multitude of problems in complex cases, with some senior Police Officers were simply reminding police investigators to take quick statements, and not over-engineer witness interviews, to illustrate:

> "*What made me think really hard about Policing going forward when a very very senior Detective passed comment and said "it's about time we stopped over engineering witness interviews and just get some quick statements off them" that sums up the prevailing attitude of senior officers at the moment".* (Participant: 9, Interview Advisor)

There was also an observable relationship between the type of evidence obtained and the courts ability to process that evidence, a Lawyer suggests:

> *"…We need to be really careful hear with how we use the word vulnerable. What that means in a legal sense and what that means for everyone else can be completely different… We don't need special measures for every victim and its fine if the victim gives evidence on video and that's later put into a statement but what we can't have is the courts time being taken up with lots of video interviews when really they would be best served to see and hear from the witness"* (Participant: 4, Prosecution Lawyer)

This quote also draws out the disparity between the meanings of the word vulnerable. The findings of this theme suggest that practitioners use language too broadly to describe populations (Brown, 2017; Aihio et al., 2017). A Defence Lawyer (Participant: 10) also stated that some applications were made simply because the witness did not want to come into the court, and this detracted from the real purpose of SM as the following quote illustrates:

> *"There's certainly the applications for special measures and sometimes those are done, as I say, on the day of trial. It shouldn't be that way, it should be done in advance but I can appreciate that*

when people are waiting to come to trial sometimes it's the build-up in the last couple of days that they've felt alright up until really the crunch is my coming and they just think: oh god I can't face this, I'll not be to speak; and then you get the application in that they want to give evidence by live link or behind a screen. And yeah, I mean there have been applications that I have opposed because quite frankly I think that they are trying to weasel out of it" (Participant: 10, Defence Lawyer)

Critically, in these cases it was cited that there were other measures available such as pre-trial witness visits which may assist witnesses with the process of entering the court. It is asserted that pre-recorded cross-examination should be conducted in advance of any trial (Bowden et al., 2014; McDonald & Tinsley, 2012) however the progress of pre-recording cross-examination has been slow (Ellison, 1999). This theme highlights the resistance, predominantly by legal professionals, to adopt SM and indeed pre-recorded evidence, due to a belief that witnesses are better to be seen within the court, whatever their demeanour. This in turn will affect the number and frequency of SM applications.

There are often significant problems in the employment of intermediaries in cases (Plotnikoff & Woolfson, 2007). An Intermediary is significant in aiding communication for any witness or defendant. Highlighting the process of assessments, in order that an intermediary, or other specialist becomes involved, was seen by most of the practitioners to be very subjective and without standardisation assessment, as the following quotes illustrates:

"The thing I hear is that he or she sounded alright to me and I've heard that numerous times when I've made an assessment. I say well let's see how we go on and then when you get into assessment then I see the Police's eyes opened when you say the things that they can't answer…" (Participant: 14, Intermediary)

"…like the special measure's assessment required... I'll be honest I don't even know who completes that assessment…" (Participant: 12, Police Officer)

This is a potential training issue for those Police Officers working on the 'front-line' of these assessments. The most common reason for the need for SM was believed to be so that the defendant would not see the witness within the court, routed in the witness' fear, this is obviously discussed within the Police Officer's example in the above quote. There was little evidence within this interview of the role of the Intermediary or indeed how, or if, any assessment would take place as to the witness's ability to communicate fully with the court.

There is an apparent gap within the ability and skills of practitioners to identify, and qualify, what 'vulnerability' is. Within the interviews, it seemed particularly around investigative approaches, in essence, the system of approaching VIW's is one which lacks some structure with forms and poor assessment approaches featuring as a bar to fully understanding the contextual nature of ability. Instead, crime type and situational perceptions of vulnerability features within the approach to understanding why someone is vulnerable and how this may affect any later evidence or court process. It is highlighted that a significant gap exists between legislative intent and application by criminal justice practitioners for intermediaries (Plotnikoff & Woolfson, 2007). The theme here suggests clearly that assessment is not conducted on a systematic basis and this has a direct effect on the use of SM.

The Police Officer (Participant: 12) and the Intermediary (Participant: 14) both described throughout their interview how poor communication led to difficulty in dealing with VIW's. In each of the interviews there was a link between the process of assessment and communication through the justice process. In each of the interviews, the cost of the Intermediary and the time available for Police Officers to spend with witnesses, was an inhibitor to providing a good service. The following quotes from the Intermediary provides an illustration of this:

"They have also increasingly been arguments about budgets and who's going to pay. There's increasing arguments about who's going to pay for that report. Who's then going to pay for that initial assessment?...I had a little boy yesterday and when he was ABE'd and he was ten and he'd had a stroke at birth and he was at a supported school and you'd think that would highlight to me straight away. They didn't, and it didn't get to me right away and it went to court… I think that's what it is, there is sometimes little appetite to involve us" (Participant: 14, Intermediary)

Increasingly, the Intermediary suggested that it was the CPS who were identifying cases where an Intermediary was required. This indicates that the type of assessments for VIW are simply insufficient and not standardised. The requirement for an Intermediary is obviously only a small part of the SM function, however, the intermediary also described how there had been an increased number of referrals for defendants, more often in these cases it was described that there had not been any assessment whatsoever within the initial investigation phase.

5.2.6 – Theme 5: Training is poor and inconsistent. Given the response of study one of this research (Ch.3, section 3.3.2) in relation to training, this was one area which was examined within the practitioner interviews. Practitioners all highlighted that they had all received some basic training on commencement of their profession, the police most often implied that their training was poor as the following quotes illustrate:

"*… You get your initial training at HQ, through the back of your MG11's and there is some training we have about the victim charter and how we should be keeping our victims up to date. That's about it really, I don't think that we've had any e-learning recently… it's not great…I think there is scope for some more training. I know I keep going back to it but the MG2 and people's knowledge of that would be improved.*" (Participant: 12, Police Officer)

"....I would say from the force not a lot of effort is put into continued training" (Participant: 5, Detective).

Training within policing organisations relies upon professional opinion, knowledge by senior managers and there is limited access to research by front line professionals (Trinder, 2008). It is apparent from these interviews that training is often based on procedural inputs around legal knowledge and less about practical applications. The latter being left to individual and subjective application. Kebbell et al. (2007) emphasise that most Police Officers have become unfamiliar with court processes and these findings indicate this as being a current symptom of police training. (Williams & Glasby, 2010). Whilst police training is held as being problematic there is evidence (Bull, 2010; Cooper & Roberts, 2005; HMIC & HMCPSI, 2010; IPCC, 2014; Ragavan, 2013) that often law enforcement has employed inappropriate methods for training. These are often in-house and reliant on organisational knowledge.

Whilst other practitioners spoke about the very specific or specialist training, they received, most did not indicate the presence of more general inputs around vulnerability as is illustrated here:

"We have the training on the technical side. We have done training provided by the NCA and CEOP and that's to do with victim identification and where to centre you efforts…We don't really get much vulnerability training apart from that" (Participant: 8, Detective)

Some of the training provided also relied upon individual practitioners and was often restricted to a location or the willingness of practitioners to engage:

"Yes, I do training with my local Police Force and have done ABE training and have done training with officers and have done training with student Police Officers. There are several RI's here and we make a point of building links with the police. We haven't really built links with other organisations, like social services, that would be really helpful" (Participant: 14, Intermediary)

A lawyer referred to reference material and toolkits which were available to deal with cases where a vulnerable witness has been identified and the lawyer also expressed that they had received training around the cross-examination of witnesses using SM but did not mention specifically training around vulnerability or that this training was held jointly with other criminal justice professionals:

> *"… the Advocate's Gateway … that's really, really helpful for us just as a guide to be able to go and look at a toolkit. If we've got somebody who we knew has got a learning disability and just Toolkit Number 4 plan to question somebody with a learning disability, click onto that and it gives you a starter for 10"* (Participant: 10, Prosecution Lawyer)

One of the key areas identified by practitioners was the availability of trained staff. A Police Officer (participant: 12) highlighted that within her 'shift' there were no trained rape 'first responders' during weekend periods, and even less available staff to conduct interviews of VIW's. This was often due to the training for such roles appearing undesirable, due to the perception that this carried more risk to investigators by way of failed cases and pressure from senior police management:

> *"Think of this weekend, there was like four rapes come in and if you are looking on shift, I don't think we have one on shift. We do have another one, she is on leave and doesn't work with us that often. You could definitely do with that knowledge. Then you package it all up and then send it up to CID, there could definitely be more trained staff, it's just not recognised as much as say public order or all the fun training stuff, and people don't want to do it because of all the risk involved".*
>
> (Participant: 12, Police Officer)

There were some barriers to effective training, and this was seen to be down to the demand placed upon practitioners to attend training courses and maintain their commitments to operational duties. This highlights the inconsistent nature in which training is applied beyond specialist roles. Given the interaction of the practitioners, particularly those working within Policing, the nature of the training provided was

viewed as an area for improvement in consistency across all disciplines. Although there was seen to be no specific training for practitioners around 'vulnerability' as concept, there was evidence of the type of inputs being cascaded within some Police Officer training, as a Police Trainer illustrated:

> "*…they get taught about Section 16 and 17 in Youth Justice and Criminal Evidence Act and they get taught about special measures and so on, but because they don't generally administer special measures if they're doing that there's usually some kind of specialist input…patchy is probably my best guess on that…but there's a big gap between the classroom and the work place, and that's just not being filled and the obvious way to fill it is through line supervision".* (Participant: 3, Police Trainer)

The identified gap within the training was with supervisors within cases; this demonstrates the way in which some training can also be influenced by external factors within the work environment, with other people's attitudes and behaviours which may also influence the interpretation of vulnerability amongst Police Officers in particular. There was also evidence within the interviews that often forums allowed practitioners to interact with some specialists and this was viewed as being very beneficial to practice, as the following quote illustrated:

> *"I work very closely with the Police. I have a good working relationship we have a criminal justice forum around autism. We have that relationship and the Police are keen to listen to learn. Magistrates and the courts, nothing…. The CPS have done some work around this, I invite victim support, but they don't often turn up. The groups work but only by effective communication. Sometimes it is just about networking."* (Participant: 7, Autism Specialist)

However, this type of training, as with that highlighted earlier with the Intermediary, is based around local connections and links with practitioners. This does not seem to be a standardised practice.

5.4 – Summary

The key themes from these interviews were: 1) practitioners assume vulnerability and risk; 2: vulnerability is defined in practice by crime type; 3) vulnerability is miscommunicated and the investigator becomes fatigued; 4) orality and the missing intermediary; 5) Training is poor and inconsistent. As with the deliberative inquiry (Ch. 5) the findings support that empathy fatigue (Stebnicki, 2000; Turgoose et al., 2017; Andersen & Papazoglou, 2015) and a mindlessness adherence to checklist processes and forms can inhibit and disadvantage VIW's and more generally vulnerable people (Langer & Piper, 1987; Thomas & Inkson, 2003; Langer et al., 2010; Palmerino et al., 1984). The findings show that there is no universal language available to describe vulnerability and this supports existing research describing how countries use the different language to describe the same population (Bartkowiak-Theron & Asquith, 2012). The use of formal, or informal language creates disparity and misunderstanding. It supports research emphasising that vulnerability is often discussed in terms of extremes (Bull, 2011) hindering practitioners by ascribing that only in these extreme circumstances will vulnerability apply. This may lead into the effect that vulnerability only exists in certain serious crime types. To consider vulnerability in this way supports theories of vulnerability marginalisation and over-inclusion (Brown, 2017; Aihio et al., 2017). This may render some eligible VIW's without support or recognition as being potentially vulnerable witnesses.

Specifically, in relation to witnesses, there can be a tendency to characterise generally discussions about vulnerability into relationships such as 'victim', 'suspect' and 'witness'. This can mean the lens to examine vulnerability is too narrow and does not become interoperable beyond those roles or status' within investigations. Effectively being unable to see clearly who is, or who is not, specifically vulnerable. In some cases, this supports an iatrogenic approach in which some support has no direct benefit to victims and where no benefit to the witness is derived (Bartkowiak-Théron & Asquith, 2017). In some cases, this can undermine individual resilience and choice (Brown, 2011) and where practitioners accept, they often

make misinformed decisions based on these policy driven categories. The findings support that some forms of risk assessments are biased on the gender of those involved, this influences the risk assessment grade; often being detrimental to men over women.

Despite research indicating that demeanour and physical presence in the court has no bearing on jury decisions and does not result in inherently truthful testimony (Hoyano, 2007; Wheatcroft & Woods, 2010; Henderson, 2015), there is still a reliance on this within legal disciplines. This hinders the progression of pre-recorded evidence (s.28 YJCEA) and could also act to reduce the number of successful SM applications. Resulting in a poor experience for victims or one in which they feel un-supported. There is equal evidence to support research (Plotnikoff & Woolfson, 2007) which considers delays in intermediaries are down to limited assessment. The findings indicate that there is no standardised assessment leaving much of the application and referral for intermediaries to tacit knowledge and guess work. In relation to training, the findings indicate a lack of specially trained practitioners available to deal with certain types of crimes, such as sexual offences. This may therefore limit the approach which may be taken in respect of other crimes were those skills to be used on an interoperable basis. Training is not standardised; it does not focus on vulnerability specifically and often looks at specific crime types or trends. The basis of most training and collaboration operates simply on a local level. Training may need to focus on attitudes, behaviours, risk, and harm in order to become more effective, but the current approach may be seen to be somewhat of a silo. There is evidence of a reliance on organisational learning and in-house training, this is consistent with previous research (Tong & Wood, 2011; Heslop, 2006). Most practitioners rely upon less reliable forms of continued development and the views of senior police officers (Trinder, 2008). This limits the use of research evidence and exposure to understanding how the law around SM works in practicality beyond forms and processes. The findings from this chapter, and the previous chapters, have been outlined and discussed separately and on the basis of each of the studies –

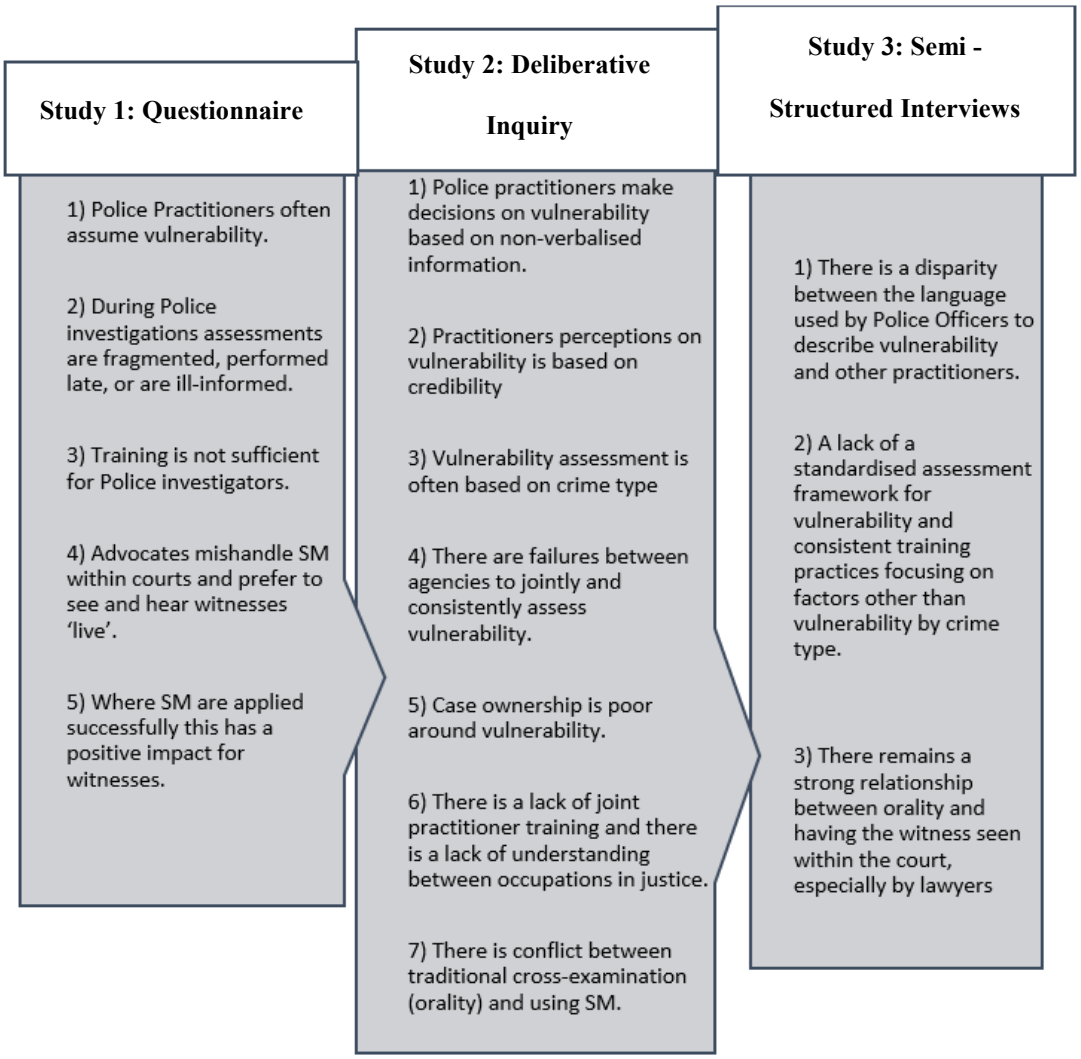
one – a survey; two - deliberative inquiry and three: interviews. Within the next chapter the similarities between the findings are examined alongside each other with key literature in order to draw conclusions across the three studies.

Chapter 6 – Summary of the empirical chapters

This chapter provides an overview of the key findings with the objective of synthesising the outcomes of the three studies. The synthesis forms the basis of the final chapter in terms of guiding the recommendations for both future research and practice. Figure 5 below outlines the main findings from each of the studies, the findings are discussed in the context of three broader discussions: 1) assessments and vulnerability; 2) criminal investigation and courts; 3) vulnerability and training.

Figure 5

Main findings by study



6.1 – Assessments and Vulnerability

In each study the process of vulnerability assessment, and lack of an agreed definition, is shown to be problematic, for two key reasons: 1) the absence of a universal standardised assessment process; 2) the assessment process being susceptible to mindless assumption with crime type often underpinning the need for assessment. In study one, for example, practitioners identified that assumption often forms the basis of vulnerability assessment (section 3.3.1). This leads to decisions being made without evidence-based criteria and underpinned by assumption. Within the interviews practitioners also identified that, over periods of sustained attendance, and repeated assessments, less information about vulnerability is recorded as practitioners rely on police-system information (section 5.2.1). This was also supported by findings within the deliberative inquiry as practitioners described some indicators of vulnerability; however, indicated a strong reliance on police systems information (section 5.2.3). Research finds that repeated police-suspect encounters often create disadvantage where inaccurate assessments are undertaken and Police Officers are most susceptible to developing negative serotypes often due to a reliance on information held within police systems (Howitt, 2018; Teplin,1984). The findings across the three studies therefore indicate that vulnerable people are affected by the same phenomena. The impact of this could be that VIW's are not readily identified or given support based on inconsistently applied assessment phases.

Poor SM applications were argued in both the deliberative inquiry (Ch.4) and the interviews (Ch.5) phases to be interpreted as resulting from empathy fatigue and mindlessness. These two phenomena being exacerbated by what might be described as viewing some crime types and individuals as being inherently vulnerable. Consistently, and in each of the studies, serious crimes and those demonstrating trauma, high risk and serious injury, were inherently seen as requiring of SM and linked to VIW. A tendency to look at extremes within vulnerability assessment follows traditional training approaches using extreme crimes to

highlight where vulnerability may exist (Green & Gates, 2014; Brown, 2017, Walkgate, 2011, Trinder, 2008). Empathy fatigue emerges within situations of repeated exposure to traumatised individuals where practitioners believe that trauma operates equally in all people irrespective of their role or experiences (Stebnicki, 2000); this is not previously explored within VIW research. Mindlessness can be found where approaches are connected to rigid terms of reference (Langer & Piper, 1987), lacking variation, linguistic attention, detailed assessment, and rely on previously known information which is context dependant. The practical outcome of this could emerge as poor SM applications with limited or absent descriptions based on through assessment, applications being made without clear benefit to the VIW, or simply no recording of any vulnerability due to a perceived lack of trauma. A consequence being limited SM applications and misdirected support undermining of personal resilience (Brown, 2011; Bartkowiak-Theron & Asquith, 2017).

The absence of a universal standardised assessment process was identified in each study as a risk to robust assessment. In study one and the interviews, for example, practitioners highlighted that decisions about SM would be made on behalf of the witnesses (section 3.3.1) and practitioners indicated that some referrals are made without knowing if any effective outcome will occur. Throughout each of the studies many policing practitioners identified interpretations about vulnerability from the environment, social circumstances, previous involvement with the criminal justice system, and stereotypical gender identities in crime victimisation while failing to recognise the need for some support for defendants. In these findings' mindlessness is apparent given the over-reliance on 'on-the-job' experience known as tacit craft with many practitioners less reliant on research informed decisions due to less reliable, but easily obtainable knowledge being available ((Williams & Glasby, 2010; Tinder, 2008). This causes shortcomings in knowledge where the perception of any vulnerability is dependent on the practitioner's tacit knowledge which may be incorrect, ill-informed, based on poor logical assessment or crime type.

These criteria reducing further the likelihood of evidence-based decision making about applications for SM. These findings together show that tethering vulnerability according to crime type, and previous involvement within the criminal justice system, is hugely limiting to the overall approach to understanding vulnerability. Research indicates that vulnerability, when considered by incident type, creates over-inclusive or discriminatory categories (Brown, 2017; Aihio et al., 2017). The findings within study one suggested that crimes of a less serious nature were less likely to receive consideration for SM and less likely to have SM applied within the courts (sections 3.3.1 & 3.3.4). This supports previous reports indicating that less serious crimes receive less support for SM and some crime types receive most attention (HMIC & HMCPSI, 2017).

6.2 –Criminal Investigations and Courts

Criminal courts, and legally applied terminology used within them, disadvantages VIW on the basis of two key findings: 1) reliability and credibility negatively impacts vulnerable people; and 2) the position of 'victim', 'witness' and 'suspect' within an investigation directs attention on consideration of SM. These are both equally aggravated by the quality of the criminal casefile and a preference for live testimony. Firstly, the deliberative inquiry and interview findings indicate that practitioners' perceptions of reliability and credibility are an important feature within the approach by practitioners surrounding VIW's (section 5.2.3). Practitioners highlighted that some vulnerabilities simply limit or stall the progression of cases, and some vulnerabilities are the very factors on which a witness may be considered adversely unreliable or not credible (sections 4.2.2 & 4.2.3). This is consistent with legal discourse which directs literature around witnesses to include assessments on their reliability or credibility (Wilson, 2003; Sprack, 2015; Doak & McGourlay, 2012). However, some terms in research used to describe vulnerable people have been shown to be *"inaccurate, unreliable or misleading"* (Gudjonsson, 2006: p. 68). This means that where a person is believed to be less credible then there is a possibility of the case being

abandoned, even when practitioners identify vulnerabilities as contributing to victimisation. The extent to which this has been explored within VIW research amongst practitioners is limited, making this project a novel approach to understanding underpinning barriers for VIW's.

Secondly, the attention given to roles within investigations can misdirect attention to SM. Within the interviews and deliberative inquiry practitioners characterise discussions about vulnerability into role categories such as 'victim', 'suspect' and 'witness'. For example, across each of the studies, practitioners identified most vulnerabilities by giving attention to a person's role within the investigation (e.g. witness, victim, defendant). This can mean the lens to examine vulnerability is too narrow with a belief that it does not operate between roles. This effectively results in being unable to see clearly who is, or who is not, vulnerable. This may explain why some measures for witnesses and defendants are not considered, such as intermediaries. Research identified that a defendant's need for intermediaries are often overlooked because of their role as a defendant in the process, despite evidence of positive outcomes in cases where an intermediary was used (Henderson, 2015; O'Mahony, 2016; Collins et al., 2017).

The preference of live court testimony was argued through each of the studies, each study identified that investigative practitioners believe that lawyers devalue SM in preference of live oral testimony for the benefit of juries and cross-examination. For example, within study one, the findings (section 3.3.4) demonstrating that legal practitioners prefer oral and live testimony within courts because of beliefs around this being better for the case and the jury. This is despite research indicating that there is no direct improvement, or enhanced belief of a witnesses by juries, where SM are used (Ridley et al., 2015; Ellison, 1999). Therefore, there remains a strong relationship between orally testified evidence and the desired presence of the witness within the court. This culminates in a friction between investigators and the courts around how a witness should take part within the trial itself. However, beyond orality this also identifies a distinct issue between investigators and legal practitioners. In that, the vulnerability of

some witnesses is considered too broadly, or insufficiently by the investigators. Research finds that cross-examination is used as a partisan approach in the belief that it secures accurate testimony (Hoyano, 2007; Wheatcroft & Woods, 2010; Henderson, 2015) and there is no direct improvement, or enhanced belief of a witnesses by juries, where SM are used (Ridley et al., 2015; Ellison, 1999). The effect for VIW's could be that SM applications are made redundant at trial in preference of live oral testimony, or investigators simply do not apply for SM in the belief they will not be given credence in the court process. This may result in a lack of progression for some cases or some witnesses refusing to attend and participate within the court process.

The findings on investigations and courts are equally aggravated on by the quality of casefiles. For example, within study one and the interviews, legal practitioners often felt that some SM applications had been made late, without full assessment and ignorant as to how evidence would be heard in criminal proceedings – often this was limited simply to recorded video evidence (section 3.3.4). For example, within the deliberative inquiry practitioners emphasised that some documents contained less detail and often assumptions were inferred, and explanations limited within the casefile as to the precise need for SM. The criminal case file is often discussed within reports but attracts little research attention, often, this is due to access to this sensitive material (CJJI, 2015; HMIC & HMCPSI, 2017). These casefile documents are central communication vehicles between courts and investigators. If the casefile is poor, and communications to the legal practitioner are ill-informed, then the outcome could be limited appetite to apply for SM on investigative recommendations. Across the three studies, participants identified that the casefile is one of the reasons why partnerships, and SM applications, fail because of inadequate information provided, many to-and-froe conversations lay blame between investigators and lawyers; this ultimately affects VIW's. Doak et al. (2012) indicated that intimidation had significant prevalence and effect, often in more serious cases and between phases of investigation and trial preparation. However,

very little discussion was made by practitioners around intimidation being communicated appropriately through the criminal casefile. This may be due to their lack of attention or experience in identifying witnesses in this area or the perceived lack of prevalence. Without clear understanding as to the benefits for intimidated witnesses' investigators and lawyers may discredit their use. What is apparent from these three studies, is that practitioners relate vulnerability to crime type, case-severity, and violence with little mention of quality training on VIW assessment.

6.3 – Vulnerability and Training

Practitioners knowledge about vulnerability is limited to case specific and on-the-job experience, further characterised by 1) previous court and legal decisions; 2) previous dealings with vulnerable people; 3) exposure to specialist training and development; 4) underlying attitudes and stereotypes. For example, across each of the studies practitioners indicated that training around vulnerability is poor, lacks a joint approach, and offers little research synthesis. Practitioners also indicate there is a lack of specially trained practitioners available to deal with certain types of crimes, such as sexual offences and most practitioners rely on organisationally based CPD and initial training. These findings offer strong support for a lack of engagement with professionals concerning research about vulnerability (Green & Gates, 2014; Brown, 2017, Walkgate, 2011, Trinder, 2008). This might be why some health informed vulnerability strategies fail to influence justice settings.

Practitioners identified that policing knowledge about vulnerability is often the reserve of specialisms and has inherent inconsistent applications. For example, practitioners within the deliberative inquiry and study one described that often specialist knowledge is the reserve of specialist departments, with a distinct lack general knowledge around court processes within the wider police population. Practitioners taking part with the interviews indicated that training is not standardised, does not operate effectively between justice practitioners, and does not focus on vulnerability specifically, but often on the

witness's credibility. Often this originates from examining specific crime types, trends, and laws about SM instead of evidence-based assessment criteria. This may explain earlier discussions around why crime type is so often relied upon as a basis for indicating vulnerability. Trinder (2008) emphasised a reliance on less reliable, but easily accessible knowledge, can result in a lack of quality research engagement in police training and most Police Officers are unfamiliar with court process (CJJI, 2012; HMIC& HMCPSI, 2013; IPCC, 2013; Gomm & Davies, 2000). The effect of this may reduce the application of SM, especially in cases of volume crime, which often rely on non-specialist investigators.

The basis of most training and collaboration, operates simply on a local level. Within study one and deliberative inquiry, practitioners did not refer explicitly to research and guidance which more broadly includes court procedure and application. Often, investigative practitioners would speak about interviewing or ABE guidance and without wider context, inferring a lack of engagement due to vulnerability being about higher risk cases. In contrast, lawyers would infer that interviews were poor and applications for measures inadequate in lower priority cases. In each of the studies practitioners emphasised little engagement between practices of lawyers, police officers and specialist investigators beyond any specialist role. There was an added acceptance that practitioners do assume the vulnerabilities of some witnesses. Many policing practitioners highlighted other pressures, such as those created by custody procedures, and the demand for deployable resources by police control rooms. Albeit, police supervision was seen as a key role for development, the same challenges existed in engagement with training and research-led literature. Research indicates that practitioners are subjected to time and 'day job' pressures which often inhibit research engagement with learning (Heslop & White, 2012; Green & Gates, 2014). Engagements using research will need to observe these barriers in order to prove successful. The remaining chapter examines these findings alongside the whole project, including further reference to literature, and directions for further study and practice recommendations.

Chapter 7 – Discussion of Results and Conclusion

This research inquiry began by exploring literature which positioned the term vulnerability as suffering a loss of practical utility amongst criminal justice practitioners and lacking a comprehensive definition, with vulnerable and intimidated witnesses suffering lost opportunities for support through SM. This thesis contributes to the body of knowledge on vulnerability by working with practitioners, in a series of studies, to research practices specifically relating to VIW's during criminal investigations and court processes surrounding witness evidence. The major findings are:

1. Crime type simplistically underpins the need for SM creating a narrow focus for investigations.
2. VIW assessment is ill-informed and sporadic, with inconsistent and evidence-based training for investigators and lawyers.
3. There is a preference in courts of physical presence for testimony.
4. Decisions on the credibility of witnesses' influences the progression of cases especially for VIW's.

Having initially outlined the major findings, these are now discussed before recommendations for practice, further research, and study limitations are discussed.

7.1 – Crime type simplistically underpins the need for SM.

The literature reviewed in the early stages of this research inquiry suggested that practitioners worked on the premise that crime type and vulnerability were implicitly related. This assumption arguably influences decisions relating on when assessment is needed, and SM may need to be applied. This may lead to some VIW's being missed and others being assumed to be vulnerable when they are not. The findings from the series of studies demonstrates that decisions relating to the implementation of SM are more complex than this. The findings suggest that adopting such a simplistic approach related simply to crime type is unjust and discriminatory. Arguably, the findings here suggest that a crime type focus is likely impacting VIW's by focussing the attention of practitioners too narrowly, and without a

considerations of a witness's individual needs. Therefore, the likelihood of some witnesses gaining access to SM, and others being missed, is greatly increased and the impact of this is poorer CJ experiences for these witnesses. In the previous literature it is suggested that focussing on the type of crime would lead to better accuracy and limit discrimination against *'vulnerable groups'* (p. 223; Nield et al., 2003). However, this does not gain support from the studies here.

The findings of this research enquiry offer limited support to show that practice guidance on witness assessment, irrespective of crime type, is followed by practitioners. For example, this project found that victims of sexual violence are preferentially assessed for SM over, for example, domestic abuse victims for measures such as video interviews. This preferential treatment is not founded upon the impact of the crime on the witness or on a detailed evidence-base around evidence quality for all crime types. The practical implications are that the employment of investigative strategies for VIW are narrowly approached by investigators. Guidance on managing the implicit relationship between crime type and vulnerability suggests a comprehensive assessment approach which examines crime type and the likelihood of evidence quality being diminished (HMCJJI, 2009; Charles, 2012; Home Office, 1998). The findings here offer little support that this type of approach is being made within the investigative phase by mainly policing practitioners. The implications of this are missed opportunities for SM and identifying VIW, this ultimately impacts on witnesses themselves and case progression.

The findings in this thesis show that approaches on SM assessment are significantly characterised around those crime types characterised under the YJCEA and those automatically eligible for SM (I.e. victims of sexual offences or modern slavery victims). In practice, this limits the approach to both assessment and SM application in other crime types such as intimidation, frauds, assaults, and some acquisitive crimes (i.e. burglary). The central narrative of previous research highlights that applications for SM are often limited due to misunderstandings held by investigative practitioners (HMCJJI, 2009;

Charles, 2012; Hamlyn et al., 2004; Tinsley & McDonald, 2011). However, the findings suggest that most approaches by investigators simply follow traditionally held beliefs about who is vulnerable with limited evidence found to suggest that other influences have an equal effect. For example: systematic periods of criminality, intimidation against witnesses posed by defendant's associates, and a family or professional view on eligibility for SM. The impact of this being the maintenance of belief systems by practitioners about who is vulnerable, which appear to be informed by some narrowly focussed research and practice guidance.

The findings across this series of studies indicate that practitioners may conclude that some crimes are inherently worthy of more attention, detailed assessment, and classically feature VIW's. This 'classically vulnerable' status may be fuelled by limitations in literature to explore VIW approaches beyond crime type, victim-based trauma experiences, and practice around investigative interviewing. Whilst a person-centred decision-making approach is recommended, this would require considerable improvement in practice. This research contributes to research narratives on repeating the same typically vulnerable status typologies in both research and practice (Walklate, 2004; Crawford et al., 1990; Brown, 2017; Aihio et al., 2017; Brown, 2011; Smith & O'Mahony, 2018). For example, labelling all victims of human trafficking, as vulnerable, may mask the true sense of what the real vulnerability is, this may result in some applications for SM being lost or misdirected. The creation of umbrella terms to describe vulnerability is unhelpful to practice and may lead to some groups becoming over-subscribed. The importance of this being to recognise that some vulnerability groups have greater access to support and SM than others, despite similar trauma experiences, and the subsequent impact of this may have an impact on the quality of the evidence presented. What this translates to in practice, is that less well recognised groups are less likely to be treated as VIW's and so will not be considered for SM.

The explanation for this lack of recognition appears to be rooted in an unconscious pre-occupation with rigid terms of reference, lacking variation, and a conscious attention to relevant semantics; an approach referred to as mindlessness (Langer & Piper, 1987; Langer, 1989). As a result of this apparent mindlessness in practice the intentions of the YJCEA are not fulfilled. All crime types are not considered, and witnesses are not being considered equally on a case by case basis. The importance of recognising that crime type impacts on assessment will assist in moving towards structured assessment which applies to all witnesses, incorporating factors such as risk and harm, avoiding over-inclusive crime-type engineering, verses an assessment on an individual and evidence-led basis. Having outlined the findings on crime type for VIW it is now important to discuss further the associated findings on assessment and mindlessness before findings relating to court processes, and reliability and credibility.

7.2 – VIW assessment is ill-informed and sporadic.

The findings reported in this research inquiry suggest that assessment is lacking an evidence-base, is ill-informed by tacit practitioner experiences, and is applied sporadically. Practitioners provided examples of limited behaviours, and indicators, which acted as a catalyst for them to consider that an assessment for SM should take place. The need for assessment was underpinned by knowledge from previously similar cases, assumption, and case material or intelligence. The practitioners did not identify a single comprehensive framework on which they might base their decisions, often indicating that reports and SM applications would be submitted on the basis of organisational, or policy requirements, the presence of obvious trauma, requests by a specialist team, or if requested by a prosecutor. In some cases, where a person had already been categorised as vulnerable (for example due to their age) less information was gathered, or no new assessment undertaken. These conclusions support previous research which indicated a similar, and sporadic, approach to assessment (Charles, 2012; HMIC, 2015; Brown, 2011).

The findings identify an arguable reluctance to assess vulnerability created by a number of barriers, these include: the pace of the investigation; a suspect's detention in police custody; other higher priority cases; previous experiences of successful applications for SM in courts; beliefs around assessment being someone else's role; or a decision to discontinue or charge a suspect. Research on SM recommends a continual assessment approach underpinned by the witness's views on eligibility (Home Office, 1998; Beckene et al., 2020; Majeed-Ariss et al., 2019). Therefore, and in practice, the concept of adequately identifying vulnerability, fails to recognise vulnerability being a condition of existence, shaped by physical, social and situational components which have variable meaning based on assessment timings, and continued changes to risk and harm. In practice the importance of this is to recognise that these barriers will inform a practitioner's approach to assessment.

Practitioners emphasised that vulnerability terminology in practice was diverse, difficult to define, and lacked purposeful direction. Practitioners described this diverse vulnerability landscape as being segregated by terms 'victim', 'suspect', and 'key witness' and this was equally unhelpful when considering who was truly vulnerable and developing a clear picture for assessment. This may be seen to have larger implications on the way in which law enforcement deals with, and handles information, concerning vulnerability. This is based on the findings that so much information is recorded about so-called vulnerable populations, without any real direction on benefits to witnesses or victims (Ch. 5). This lends support to research showing that a recognition of vulnerability alone does not necessarily attract the right support from professional bodies (Brown, 2011; Asquith, 2012). The findings in this thesis show that there is a generalised vulnerability alertness amongst practitioners; however, this does not possess a clear vision to them of who is vulnerable at all. This lends support to research asserting that vulnerability is a term used too widely and is over-prescribed, resulting in lost meaning making it more difficult to interpret and identify those most vulnerable (Bartkowiak-Theron & Asquith, 2012; Brown, 2011; Asquith, 2012;

Schroeder & Gefena, 2009). These findings strongly relate to the capacity needed in order to deal with populations where vulnerability is either over or under prescribed or based on shifting governmental focus, priority, or emergent trends (Brown, 2011). If the action of investigators is to simply consider vulnerability on organisational priority, crime type, or policy focus then capacity issues may well emerge as practitioners grapple to determine on what basis a person might become vulnerable and thereby need support or SM. The practical impact for witnesses is lost recognition about a witness' vulnerably in the justice process.

Throughout the data chapters it is asserted that mindlessness and empathy fatigue emerge together due to the very nature of vulnerability work – complex, demanding, often with stories of personal trauma. Often, problems in vulnerability identification methods are proposed to result from biases held about people, and their capabilities, and this is often used to explain why some information is missing or a particular case direction emerges (Morabito & Blank, 2017; Bogaard, et al., 2014). Bias does not sufficiently explain why investigators rely on weak assessment indicators or in some cases make no assessment at all. The findings indicate a lack of conscious attention to relevant semantics, assumptions drawn in the past, and terms of reference for vulnerability limited on evidence-based foundations and detail – this is classically mindless behaviour (Langer & Piper, 1987; Thomas & Inkson, 2003; Langer et al., 2010; Palmerino et al., 1984). A professionally fatigued response, with a reliance on previous factors and behaviours, can be used to describe the limited approach on assessment as empathetically fatigued (Stebnicki, 2000; Turgoose et al., 2017; Andersen & Papazoglou, 2015). Empathy fatigue and mindlessness must be further researched to understand their full impacts for vulnerable people who access justice through policing.

Within this research inquiry there were limited discussions about applications for intimidated witnesses – s.17 YJCEA. These witnesses may be eligible for SM based on several factors including their

personal circumstances, threats made by persons linked to the defendant, or social and cultural factors. Police practitioners were often able to describe how most applications related to vulnerable (s.16) witnesses because they were more recognisable as requiring SM. This may have a relationship to the timing of the application for SM within the CJ process, and the sporadic nature of assessment which often linked to certain crime types instead of other factors, such as levels of intimidation. This mindless, empathetically fatigued, approach to witnesses and VIW offer an explanation to the underpinning practitioner behaviours in response to VIW. Particularly around assessment and recognition of vulnerability or intimidation. This is supported by the simple acceptance that crime type infers vulnerability and overall, this limits further work and detailed assessment.

7.3 – A preference in courts of physical presence for testimony.

The current findings indicate a preference to see and hear witnesses physically within the court room. These are predominantly beliefs held by advocate practitioners, with the preference to see the witness appearing within the court. This is a comparably different view that that of police investigators surrounding the use of video recorded evidence. In some examples investigative practitioners indicated that SM would be abandoned at the trial due to beliefs the evidence would be served best by the witness's physical presence (Ch.3 & 4). The effect of this could mean a low rate of SM assessments and applications if policing practitioners believe that they will be abandoned. Narratives within the study one (Ch. 3) show many legal practitioners believed that it was better to see and hear from witnesses within the courts, rather than use video recorded evidence, due to a witness's ability to covey emotion and offer quality evidence. Views, mainly held by advocate court practitioners, showing a preference of physical presence by witnesses in the court may explain why progression has been slow around s.28 YJCEA (pre-recorded cross-examinations). Research finds no clear and consistent impact upon jurors in using different presentation modes and offers that the impact on such physical presence measures may be overstated

within legal discourse (Ellison & Munro, 2014; O'Mahony, 2011). The findings in this thesis show a lack of reform on pre-recorded cross-examination (s.28) with a continued focus on physical presence for witness testimony. This is the traditional position for cross-examination, and one on which the UK adversarial system has shown progress towards reform (Ellison, 1999; Hall, 2009 O'Mahony, 2016; O'Mahony, 2013; Burton et al., 2006).

Investigative practitioners' concerns emerged about the practice of cross-examination. Practitioners provided examples of some witnesses being unfairly questioned and, in some cases, they believed that advocates preferred seeing witnesses emotionally distressed because this was good for the case overall. Some investigative practitioners gave examples of warning witnesses about the trauma of giving evidence, presumably with foresight that SM may not be granted by the courts during a criminal trial. This offers some support to existing literature describing the process of advocacy being seen as an opportunity for 'destroying' prosecution witnesses in a zealous and partisan approach, leaving little margin for ethical practice (Henderson, 2016; O'Mahony, 2011). The effect of this means that some witnesses may decline to offer any evidence, or withdraw their support for the case, in order not to appear within the trail itself. This has a relationship with the way the adversarial system remains to operate within a system of 'orality', supported largely by witnesses who are willing to offer testimony which can be examined (Roberts & Zuckerman, 2010; Baber, 1999; Ericson & Perlman, 2001; Hoyano, 2005). The importance of this being that where this friction takes place, witnesses may become confused as to why the options of video recorded evidence were explained to them in the outset of the investigation, only for this to be withdrawn at a later stage. This may help determine why some investigators limit the use of SM where there is a belief that they would not be used within the court procedure. A conflicting belief in the value of SM between advocates and investigators can result in SM applications being limited or not progressed at all. This is a major finding within this this study and sits parallel to findings on witness credibility.

7.4 – Decisions on the credibility of witnesses influences the progression of cases.

This series of studies identifies that practitioners draw acute attention to witness credibility, especially in cases of VIW's; often, this negatively impacts case progression. Practitioners emphasised that often in VIW cases the credibility of the witness would be distinctly questioned and scrutinised; for example, around minor inconsistencies in evidence, previously unrelated behaviours, and material held by other agencies such as schools, colleges, and medical records. Practitioners explained that these credibility concepts may have a distinct influence on the progression of some cases, if not explicitly then subtly, and may result in a cases discontinuance. However, practitioners were unable to identify frameworks used to support their decision making (for example the test on credibility is set out in Onassis v Vergottis [1968] 2 Lloyds Rep 403 at p. 431). The importance of this finding rests with the number of cases which are not put before courts due to investigator concerns about the credibility of a witness. This may equally contribute to concerns that some witnesses are simply not believed.

The findings suggest that investigative practitioners often believe that decisions on the credibility of witnesses are made too early within many investigations concerning VIW's. The effect of being that cases involving VIW are concluded without further action due to ill-informed beliefs that a witness will not assessed as being credible within any likely criminal trial. The importance of this finding to research shows that credibility must be recognised as a distinct element of investigative case work and practitioner decision making. Literature often emphasises the importance of discussions around the credibility of witnesses and courts (Sprack, 2012; Wilson, 2003; Doak & McGourlay, 2012). However, few explore the matter in relation to investigative practitioners and criminal practice. The impact of this may be a misinformed understanding resulting from language drawn from court and legal practice.

In previous research the links between vulnerability, and credibility are often narrowly discussed around cases of rape and sexual assault, it is often linked in concept to so-called 'sexual history evidence'

(Olivia, 2018; Cowan & Campbell, 2017). The narrative by practitioners indicates that these considerations are made in other case and crime types, extending way beyond sexual cases. Practitioners emphasised that often focus is drawn dogmatically on previous material which may discredit witnesses, as opposed to the quality of current evidence or employing measures which may improve this. This may originate from research highlighting that some vulnerable witnesses were prone to: *"providing information, which is inaccurate, unreliable or misleading"* (Gudjonsson, 2006. p. 68). Given this complex mix of language around the concept of credibility, it is detrimental to VIW's to apply this illogically, or too early within criminal investigations, or in cases where the poor quality of the interview may lead to poor decisions on the credibility of the witness.

Closely related to the issue on interview quality, narratives from practitioners within each of the studies indicated that the use of intermediaries was considered too late within some criminal investigations. A delay in the employment of an intermediary is likely to provide an opportunity for early evidence to be affected by inconsistent narratives, increasing the likelihood of credibility being an issue for VIW. This supports existing research which indicates that the Intermediary will be overlooked, used in extremes, or considered only after some witness account has been obtained (Collins et al., 2017). If VIW's are more susceptible to inaccuracy (Gudjonsson, 2006) then wider understandings around both assessment, interviewing, and the use of specialisms within interviews would benefit VIW's.

The guidance (MOJ, 2011) refers to factors, such as credibility, being excused from the early decision making when dealing with VIW. The findings here indicate this is applied sporadically at best and is deeply misunderstood within investigative practice. An example of the effect of this type of decision making is provided within the Rotherham Sexual Abuse Enquiry (Jay, 2014) where judgements around the credible nature of witnesses was taken too early, heavily influencing case progression and impacting most on VIW's. The YJCEA (s.16 (5)) indicates: *"the quality of a witness's evidence are to its quality in*

terms of completeness, coherence and accuracy" and *"coherence"* refers to a witness' ability to give answers which addresses questions put to the witness, and can be understood both individually and collectively. Considering vulnerability, even alongside terms such as *'coherence'* and *'accuracy'* may become inherently problematic, showing a tendency to think about these terms too literally, again hindering case progression. Having described and discussed the findings, and some implications for VIW and SM, the next section offers recommendations for practice and research and the suggestion of a vulnerability assessment model.

7.5 – Recommendation - the Principals of Vulnerability

The implications and recommendations for practice and research mainly concern phases of assessment, research, and policy on vulnerability related to the credibility of witnesses, implications for evidence-based practice, and relationships between investigators and legal professionals. If policing organisations are to improve their response to vulnerable people, be they witnesses, victims, defendants or otherwise then the following core Principals of Vulnerability (PoV) should be present. Each principal addresses the findings within this thesis, and each is designed to be applied alongside the other vulnerability principals.

Principal 1: Co-constructed Assessment: Assessments about vulnerability are a key and fundamental element to addressing some of the concerns highlighted within the research. Whilst models of assessment may exist in some localised practices, or for certain crimes (for example in Domestic Abuse there is the Domestic Abuse Stalking Harassment DASH assessment) there is a need for a clear and evidence-led approach to the issue which addresses the findings around crime-type, mindlessness and empathy fatigue. The principal of co-constructed assessment is a simple one, all assessments of vulnerability made by an organisation should be shared with the individual impacted by the assessment. This means they are at the centre of the assessment framework and have their opportunity to direct the

support given to them. This could mean that an investigator provides a digital gateway for the person to see what has been assessed about them and gives therefore an informed view of what will happen to them and their information. Assessments which are not co-constructed with people risk organisational and individual mindlessness. The co-constructed nature of assessment also means that referrals do not take place which lack clarity and detail on what the referral will mean for them; avoiding therefore referrals which contain misdirected or miscommunicated information. Investigators should rationalise assessments which are not co-constructed for reasons of investigative sensitivity, or where a person declines co-constructed assessment. However, the leading element in this principal is forthright and centred involvement of the person being assessed. Organisations, or investigators, should not leave the assessment as second purpose to the evidence being gathered. They are one and the same, sharing equal attention. The practice of assessment itself should form part of the legal framework for the YJCEA, therefore becoming mandated for each witness and where referrals for support are made these should not simply be part of widespread organisational culture or be without purpose or benefit. Adopting this principal will act as an inherent quality assurance mechanism with people most impacted at the centre. This leads into the next principal - organisational communication which should be evidence-based and co-designed.

Principal 2: Evidence-based and co-designed active organisational communication: The practice of communicating vulnerability between organisations must be evidence-based and co-designed between each organisation involved. Practically, this means an agreed communication practice which possesses elements of information relevant to each organisation. These communication methods must be co-designed with vulnerable populations, policing organisations, and criminal justice partners such as the Crown Prosecution Service, lawyers and victim support alongside academic's and psychologists. These organisational communication methods might have localised variations in technology but all should adhere to a standard rating framework using two factors: risks to the evidence, procedure, process and the

cases overall and secondly potential harms if the risks are not managed meaningfully. These communications should be universal despite any crime, offence type, or the outcome of an investigation.

This work will influence police training about understanding the impacts of responding vulnerability using crime type and standardise the way organisations communicate. Research on assessments within policing should examine the issue to include victims, witnesses, and defendants or those who simply encounter the police. This would enable better decisions and evidence-based witness strategies, offering a more comprehensive and structured approach to assessment supported by key research findings and with organisational buy-in from the distinct partners outlined above. The practice of recording large numbers of the population as being vulnerable may have an impact on the future considerations around access to services and the capacity of such services to deal with large volumes of vulnerable people. A future study will examine perceptions about vulnerable people between different professions. This would help within police training to see how different agencies respond to vulnerability. In Western societies, there is a long history of deploying the concept of vulnerability in the management, classification and categorization of various groups of people such as sex workers, asylum seekers, refugees, as well as disabled and homeless people (Brown, 2011; Rossi & Brunila, 2017). The challenge within further research is to approach vulnerability as being heterogeneous with a large and diverse range of characteristics and facets instead of focusses too much on a specific set of behaviours. Sharing these understandings and values around who is seen to be vulnerable, and how this operationalises between professions may enable better decisions about vulnerability. These first principals need to be supported by wellbeing regimes which keep practitioners healthy and inquisitive to vulnerability.

Principal 3: Evidence-based Wellbeing Regime: Organisations must have an investigative wellbeing regime wherever they are charged with any investigative activity. This goes beyond simply policing approaches. Investigators be they Police Officers, detectives or staff members are distinctly at

risk from developing mindlessness and empathy fatigue with a distinct risk to effectiveness, specifically in this research around VIW. Practically, this would mean that all investigators are subjected to screening for health and psychological fatigue, and many more screened for tailored support in recognition of the demands brought about by trauma-based work. This would go beyond current arrangements for police health screening. Empathy fatigue is widely recognised in health settings but should be recognised within policing (Stebnicki, 2000). Research and practice interventions may include respite for staff working in highly complex vulnerability environments and regular debriefing for all staff to understand vulnerability and trauma exposure. Repeated exposure to traumatised witnesses, and their evidence, must be specifically recognised within criminal justice practitioner well-being programmes and this research will support this. Management have a role to play within this and should improve the offering for staff around regular de-briefing using mindlessness as a central point. Investigator wellbeing must also be around rest periods and, where possible, rotation through various specialisms to create a worth of exposure to different types of crimes and witnesses. However, this exposure does not simply have to be through a crime lens. It could also include time spent with different populations to understand how they communicate and relate to investigative organisations. Investigators should be exposed to peoples after-story of crime to understand the impacts of the journey, allowing for the investigator to see how they fit within the overall journey. One of the findings of this thesis relates to mindlessness, and so the next principal aims to address this.

Principal 4: Organisational Vulnerability Mindfulness: Mindlessness is a distinct psychological event in which people may become dependent on overlearning and distinctions drawn in the past. It can be related to fixed functional processing and form from a reliance on categorisation in which individuals lack context. Being mindful is the practice opposing many of the problems with mindlessness. However, this goes beyond simply the remit of a single person or investigator. Organisations may become mindful by removing some fixed and functionless processes – for example, the mandating of certain referrals for

certain people profiles. This includes also where systems mandate the fields of victim, suspect or witness. Investigations and vulnerability are much more nuance than these simple roles. In some cases, it may not be clear or obvious and who possesses these roles and forcing the choice through technology systems distinctly offers mindlessness, as do checklist practices. Vulnerability mindfulness is the complete opposite concept of mindlessness, where investigates do not learn about vulnerability through a crime-type lens. However, are trained in the concept of general aspects which might make a person vulnerable – for example, a neuro-diverse person may recall events in a non-chronological way meaning the timeline is perhaps backwards. The state of recall should not render the person as being less credible. This could further develop research beyond criminal justice organisations to the wider benefit of vulnerable populations (Schroeder & Gefena, 2009; Brown, 2011; Bartkowiak-Theron & Asquith, 2012). This would help characterise vulnerability more clearly and direct support where it is most needed.

Individually, vulnerability mindfulness is about attention to semantic details and possessing an approach to people which does not render them less credible. These elements of forensic detail are already covered within the Framework for Investigative Transformation (FIT) which possesses eight elements designed to promote an evidence-based approach to investigation (Griffiths & Milne, 2018). These are: ***leadership*** – setting the right organisational culture; ***legislative frameworks*** – committing legislators to evidence-based statutes; ***investigative mindset and cognitive styles*** – displaying the correct attitude to open-mindedness and alternative hypothesis; ***investigative knowledge base*** – flexibility to innovative and knowledge-based frameworks; ***training and knowledge regimes*** – capturing skill transfers from one area into another and ensuring quality role-play with expert feedback and involvement; *quality assurance mechanisms* – to ensure standards are maintained and developed; ***the investigative ability*** – selecting able and people with identified potential; ***technology*** – accessible and transparent technology. These FIT factors form the basis of being vulnerability mindful and again span across crime types and deal with some

of the problems identified within this research around poor approaches to credibility assessment. Practically, training which engages mindful attitudes to assessment would assist; however, with a focus on promoting evidence-based practice and research the reliance for investigators on previous decisions is likely to decrease (Langer, 1992). The improvement around investigation needs to also dovetail into justice, which is where principal five fits alongside the previous principals.

Principal 5: Active Vulnerability Justice: The effectiveness of live oral testimony in courts, and beliefs about this being the most effective method, are being upheld by legal professionals. This thesis identifies that one of the risks to the future progress of using SM is the continued idea that the best evidence comes from seeing and hearing a witness within the court and abandoning Special Measures. Studies must examine further the effects of general witness cross-examination strategies which are digitalised. This may be assisted by research on vulnerability itself which may be useful to advocates and judges in guiding juries. These future studies will seek to promote research-informed insights of the effects to witness evidence beyond the lens of the YJCEA with the hope to provide confidence to the legal progression to rely on digital presence for witnesses in the court. This must feature alongside principal four and the FIT because the legal profession must also have confidence in investigators to deliver a quality interview product. Policy and law makers may also consider the damaging effect of defining vulnerability to some crime type or specific strand of poor health, social circumstances, or previous involvement with justice authorities. Legislators should also improve the deadlines for cases where a VIW has been identified, this is about faster timelines for these cases with approved routes for access of support such as intermediaries and specialist courts.

Active vulnerability justice is also about clear understandings on credibility. If credibility considerations come too early within an investigation or approach, then this may direct action for the case overall, and become detrimental to the VIW. Research attention around perceptions and considerations of

credibility may develop understandings around case progression, the author of the thesis plans to research this from the investigative perspective. Practically, this would ensure that decisions on credibility might become more structured, evidence-based, and free from localised opinion and subjectivity. This may additionally improve the relationship with witnesses concerning their feelings about being believed. Many governments prepare and adopt policy and law to determine responses to vulnerable populations, but few make an analysis of the practical decision-making processes for practitioners. A move towards understanding decision-making between police practitioners and advocates may be of equal benefit to both practices. Whilst the intended focus of this thesis did not examine language responses, there is a much wider focus to vulnerability to be progressed to ensure that VIW's are not disadvantaged in the legal system of the UK. This with the potential that laws and policy be adopted to reduce the potentially discriminatory connotations that are connected to vulnerability, where it is ill-defined or based on political ideology. The remainder of this chapter focusses on the study itself before coming to a final reflection on the thesis. These five principals must finally be underpinned by evidence-based vulnerability training – principal six.

Principal 6: Evidence-based Vulnerability Training: Training is a vital element to the transformation around vulnerability – and the five principals discussed so far should hinge around a quality evidence-based training element. This is seated alongside a growing desire to make policing more evidence based (Sherman, 2013; Holdaway, 2019; Fielding et al., 2019; Pepper et al., 2020) and this largely follows other sectors such as health and social care who are further developed within their evidence-based approaches (Gomm & Davies, 2000; Pepper et al., 2020). This thesis contributes to knowledge around the concepts of vulnerability for criminal justice practitioners, and the principals identified here should form part of that. The author of this thesis is a committee member on the national vulnerability framework for police and the national investigation guideline committee at the College of

Policing. So, future contributions to evidence-based policing around vulnerability, from the findings of this thesis, have already begun to have an influence. However, the system of training between policing and justice would largely benefit from an improved system of getting research into practice and training. However, equally, learning the lessons from front line investigative police work through active quality assurance as identified in the earlier principal using FIT. A systematic review of vulnerability literature, and its relationship to witness assessment, has already been produced (College of Policing 2019; College of Policing 2019a). This needs interpretation and its true findings and implications embedded into Policing to inform training about SM and VIW needs are, and to focus well beyond the practice of simply recording interviews for court processes. There are gaps in knowledge about the effectiveness of the current training, so for future research and training to be correctly focussed, a systematic literature review would be of benefit. The development of vulnerability identities within police training and research may have a larger effect on the way in which policy is developed, and the ethos of vulnerability is conceived within socially derived policy (Brunila & Rossi 2017) so preparing these systematic reviews to impact on training will largely meet principal 6.

Preparing an evidence-base and embedding these six principals within policing will be a difficult and complex task, and from this research inquiry a small amount of the current research is being utilised between policing and legal professionals. The author will build on this to progress excellence in this area of practice. The outcomes are to affect the number of applications for SM, the traditional attitudes towards witness evidence and cross-examination, need to change and this will involve not only an evidence-based approach in policing but also across CJS professionals. In research we need to use combined methods to not only understand what prevents successful practice around vulnerability, but also where successful practice exists. This can be achieved through combined methods to understand vulnerability which are discussed in the next section as being a challenge for future research.

7.6- Using combined methods to understand vulnerability – a challenge for research.

The design and combination of deliberative inquiry with interviews is an original methodological approach in relation to explorations around vulnerability and the YJCEA. The key benefits of the approach in this thesis are: deliberative inquiry sessions were informed by other methods simultaneously therefore increasing the depth and content of discussion; the researcher was able to easily make sense of data to inform interviews and deliberative inquiry sessions; complex issues were deliberated between sessions ensuring that participants explore complex issues fully. There are however limitations which were drawn into sharp focus in an operational policing environment; firstly, the demand on co-researchers to commit to higher priority, sporadic incidents, impacts on their available time. Secondly, it was difficult to draw together policing and non-policing practitioners with many non-policing participants opting for interviews. The reasons for this were not specifically explored in this thesis. However, I believe this was mainly due to many of the critical reflections which were offered between the two areas of practice (i.e. policing and non-policing). The importance of this is the wider approach to research on SM will need to negotiate both areas of practice as vulnerability sits parallel to both. Therefore, the challenge for further research is to ensure a mixed-method design with enough opportunities for participation.

Future challenges for research about vulnerable people will include those related to simply working between justice organisations. Increasingly, research within this area is undertaken by practitioners who are becoming academics; so, called pracademics. Like me, they have distinct opportunities to access data and participants. The process of being an insider-outsider is discussed within the method section of this research inquiry and future funding of research should be prioritised in favour of this collaborative approach. It is important to stress that research about policing must be done with people who have current knowledge of systems and processes to make the research most relevant and have an impact on practice. The deliberative inquiry method is most valuable in conjunction with other data

collection techniques as enables other explanations to be captured whilst offering a more inclusive research design. Deliberative inquiry could be used within the framework of evidence-based policing to help integrate research into practice using 'action' initiators or groups. The dialectic research cycle makes a purposeful the approach by the researcher when using a mixed-method design (Rowan, 1981; Heron, 1996; Reason, 1988; Mead, 2002).

There is equal value to understanding the spread of skills and roles within future deliberative inquiry sessions. Having an over-subscribed representation within a group has potentially limiting consequences to others who may want to participate; in essence, feel that their experiences will not be of equal value to others. To overcome this, it may be useful to examine the profile and spread of participants prior to the deliberative inquiry sessions and hold more groups in parallel. This may however fragment the discussion and so a plan would need to operate to share discussions between groups. This could then work to equalise the participants in terms of their roles, skills, experiences, and shared participation. The early work of Reason (1988) within this thesis influenced the approach to the deliberative inquiry suggesting that participants may not equally contribute to each session; however, the overall research design should fluctuate around this. This is a key understanding in promoting deliberative inquiry as a method within an operational policing environment, which ultimately has significantly variable demands for all the participants to the commitment to sessions equally. The general limitations of the research in this thesis is now discussed.

7.7 - Research Limitations

There are two general limitations to this research: firstly, the sampling and selection of participants. Study one, as with the deliberative inquiry and interviews, has a larger participant input from Police Officers and Detectives. In future research I would look to map criminal justice practitioners and specifically target these groups within the sampling strategy instead of relying on their interaction from

within their organisations. The geography and location of the deliberative inquiry and interviews may have limited some participation. With the progressing nature of technology there may be opportunities to hold these sessions remotely whilst appreciating that some dynamics may change. The use of the online questionnaire at the commencement of this study did provide a basis for the development of the later research questions in both the deliberative inquiry and interviews. The critical realist framework applied to this research, alongside the insider-outsider position of the researcher are well placed to examine concepts such as vulnerability. This may be used to a greater effect by using a combination of two researchers as insider-outsider posts who may jointly reflect on the work together. As identified in chapter two the use of Bhaskar to explain logical chains of causation, and interrelationships between factors are more likely to generate a coherent explanation; of which, the studies within this thesis achieved. It is therefore considered unlikely that the use of realism frameworks is a limitation to research around vulnerability.

The second general limitation to this research, and perhaps the exploration of vulnerability overall, has been the lens of the YJCEA with the focus largely on witnesses within English criminal trials, under an adversarial system. Within the finding's, particularly around those participants within Policing, the word vulnerable is used as a pre-fix to define others within the population (e.g., vulnerable adults, vulnerable children, vulnerable victim). In future studies I will deconstruct these terms within my questioning approach to the participants, to distinguish and explore vulnerability in more detail and beyond simply discussions on witnesses. The importance of this would be to consider the impact of the findings in this thesis amongst general vulnerability studies (for example, those witnesses or victims in harder to reach populations such as within prisons or secure facilities).

7.8 - Contribution to Originality

This thesis responds to a gap in knowledge on the approach made by practitioners on vulnerability and SM by exploring the often-unreported approach in policing investigative practices. The existing contributions to knowledge around SM and vulnerability focused on practitioner views about the effectiveness of SM; VIW views on SM; data about the number of measures used under the YJCEA; approaches to interviewing VIW's; the quality of VIW evidence; and the decision making of prosecutors on VIW (Nield et al., 2003; Cooper & Roberts, 2005; Smith & O'Mahony, 2018; Bull, 2010; Cooper, 2010; Charles, 2012; Hamlyn et al., 2004; HMCJJI, 2009; Franklyn, 2012). As such this thesis contributes to knowledge around the underpinning systems of SM and approaches to VIW in relation to criminal investigations. This is important to future approaches in practice and research on the issue of vulnerability and understanding why SM are not requested in practice. The wider implications are on investigative skills training, recognising vulnerability and police wellbeing.

The approach within this thesis has not been to define vulnerability or determine if any processes surrounding SM were individually satisfactory. The key focus was instead around how vulnerability as a concept relates to witnesses, not simply victims, and how this manifest throughout criminal investigations. The findings uniquely show how detrimental the influence of crime type can be on decisions around vulnerability. The YJCEA has been in place for almost two decades providing the option for support for some witnesses in court. The findings indicate a continued and traditional adherence to physical appearance within courts causes some SM to be de-valued, or are superfluous, in criminal investigative practice. The importance of this contributes towards understanding why some SM applications are not made, come too late, or are misplaced in criminal proceedings. Ultimately, this disadvantages witnesses and contributes to lost opportunities to support VIW's.

To approach the problems associated with the identification of vulnerable people using a CR lens is unique. There is a strong argument to address a problem like vulnerability identification and this has been limited where practitioners are not approached for their perspectives. Research must reject notions that vulnerability can be considered on a singular basis; for example, someone who is a victim of domestic violence, or a sexual offence, being inherently vulnerable limits the view that comprehensive assessment is required. This also maintains the status-quo of the traditional lens of vulnerability. The outcome is arguably mindless approaches to vulnerability which has no direct benefit to witnesses and misdirected support, creating the risk of over-inclusive and discriminatory categories. Drawing from mindlessness (Langer, 1992) and empathy fatigue (Stebnicki, 2000) to explain approaches to vulnerability is unexplored within previous research and is novel to this thesis. The importance of this will be to initiate research exploring these concepts further and their impacts on vulnerability in the practice of criminal investigation.

This thesis equally contributes to the body of knowledge towards understanding the language of vulnerability which is not universal (Bartkowiak-Theron & Asquith, 2012). Previously literature did not explore the language of vulnerability within law enforcement practitioners with a focus at practitioner level and on witnesses. Using the knowledge in this research inquiry, and the lens of critical realism, future researchers and practitioners will be able to identify the impacts of discussing vulnerability using broad or ill-defined terminology. This is important because constructing vulnerability based on crime type, or stereotypical foundations of who might be considered vulnerable, is fundamentally flawed. In practice, this means some support to witnesses is limited due to the current narrow construction.

The YJCEA does not specifically alter the way in which criminal trials are conducted and there remains friction between the use of SM and the tradition of being able to see and hear the witness within the court. This culture maintains a traditional focus on to aspects of cross-examination and evidence procedures. The importance of recognising this is around the approach of s.28 – pre-recorded cross-

examination and re-examination – which provide VIW's options to access justice by facilitating a different approach to cross-examination. Unless there is a fundamental departure by legal professionals on a preference to bring witnesses into the court, the development of further measures under this act may yield little uptake within practice. Equally the impact of decisions about the credibility of witnesses cannot be ignored and this reaches across investigative and legal boundaries and is an issue on which this thesis contributes. The importance of this will be to undertake future research to understand fully those cases, involving VIW's, which have not been progressed due to concerns on the grounds of credibility.

7.9 – Final Reflections

This research successfully explores vulnerability through the employment of a critical realism approach. Three triangulated studies have been undertaken in respect of data collection: a survey, deliberative inquiry, and interviews. These approaches examined not simply the law in relation to witnesses' evidence but also practitioner's underpinnings of the application of vulnerability. The YJCEA provided the largest movement towards equality for vulnerable witnesses within the CJS. However, it does not fundamentally change the nature of criminal trials, and indeed investigations, and six principals of vulnerability are recommended to improve practice. Whilst practitioners may value and promote the use of SM, the adoptions of the legislation are, at best, a simple approach to a winder and more complex issue for vulnerable people which is highlighted through this thesis – that is of equal access to justice. Problems have been created with the approach of over-inclusive terms for vulnerability and this has made it more difficult to identify vulnerable people and witnesses. A new approach, using the principals highlighted here, is required, and recommended to examine vulnerability approaches beyond current language, terminology, and practice. Mindlessness and empathy fatigue must become part of the research and practice picture; they are inherent concepts which help explain current short comings. Vulnerability, as a concept, is too broad to encapsulate the precise nature of the problem faced in within criminal justice and

the dogged pursuit of determining some crimes as being associated with vulnerability, and others not, can be wholly damaging to the communication of precisely who is vulnerable within our society. Witnesses will hopefully benefit from a practice refreshed in its understanding of vulnerability from this thesis.

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Appendices

Appendix A:

Semi-Structured Interview – Questions

This research concerns the study of 'vulnerability'; it is specifically focussed on those who become victims and witnesses in criminal proceedings. The term 'vulnerability' can have a wide meaning and in answering these questions you should do so from your own point of view and interpretation. This can include the view your organisation expects, and your own.

These questions are designed only as a guide:

- What do you consider are the characteristics of 'vulnerability'?
- How do these characteristics present themselves to you?
- How do you feel these characteristics are dealt with when people come into contact with the criminal justice process (as victims and witnesses)?
- What are your experiences of dealing with this?
- What agencies are involved in dealing with the 'vulnerability' you encounter?
- Do you believe there are some assumptions made about a person's vulnerability when they come into contact with the Police?
- What difficulties do you find when vulnerability is assumed or not assessed fully?
- How do you communicate any 'vulnerability' characteristics between organisations?
- Is this type of communication effective?
- Are there any models you believe are effective for communication and assessing risk and harm?
- Do you believe this could be improved?
- Do you ever collaborate with the justice system in any training?
- Do you have any reflections on any training received in relation to vulnerability or witnesses?
- Is this adequate and could it be improved?
- Are there any other reflections you have in relation to this research?

Appendix B:

Deliberative Inquiry: Session Material – session 1

Session 1 – Perception and Orientation

'Vulnerability' is a term often used to describe a multitude of complex social areas. It can lack definition and universal meaning between different organisations, our first task as a group is to develop this meaning.

Area 1 – The hurdles to vulnerability assessment and communication between organisations.
Quote for discussion: ***"There is a failure to identify [vulnerable or intimidated] witnesses early enough in the investigatory process and opportunities are missed"*** *– Cooper and Roberts et al (2005)*

Proposed questions for discussion:

What 'characteristics' do you feel are important to identify?

What experiences do you have from within your organisation or department?

What are the hurdles to communicating this between organisations?

Perception and Orientation

- You may use the heading box' below to help note down your ideas.
- Remember that these may be different to another research partners experience, this does not mean that they are wrong or will be valued less.

Characteristic	Definition

Session 2 – Reaction to Third Parties

Please find below some responses from other participants within this research. Please examine the responses and select one which you feel is pertinent to discuss with the group. Remember that the legislation being discussed is the Youth Justice and Criminal Evidence Act 1999 with reference to Special Measures for Vulnerable or Intimidated witnesses. Within this selection are views from advocates, academics and justices.

As an individual you should look to respond to the following questions:

- Which participant's feedback did you choose?
- Is this a reflection of current practice?
- What are your views in reaction to this participant's feedback?

Session 3 – Caselaw Analysis

Caselaw Summaries:

Case 1) In the case of R v Forster (Dennis) [2012] EWCA Crim 2178, fear and distress about testifying and intimidation from the accused's family and associates was a very prevalent and important factor. This was a case of sexual violence; the accused had threatened and manipulated witnesses throughout the case. There was concern that once the evidence gathered for the initial offence had been submitted, attention was not paid to new intimidation offences (Criminal Justice and Public Order Act, 1994; s.51) with the requisite application of Special Measures and VRE procedures.

Case 2) In the case of R v Iqbal (Imran) & anr [2011] EWCA Crim 1348, the victim-witness was not identified as being in need of specialist support during the initial Police evidence gathering phase. Some months later the victim-witness was required to give oral testimony under cross-examination in the Crown Court, having provided a written statement to the Police, following an incident where he was assaulted. The first Crown Court trial in 2010 was halted after the Judge became concerned about the victim-witnesses 'apparent learning and communication difficulties'. It was submitted to a later Court that he had 'significant impairment of social functioning, intelligence and communication'. The victim-witness therefore required screening

from the defendant (YJCE, 1999; s.23) and an intermediary (YJCE, 1999; s.29) in order to effectively take part in the trial proceedings.

Case 3) In R v PR [2010] EWCA Crim 2741 it was recorded that one victim of historic familial rape was permitted Special Measures under the gateway of fear and distress of testifying (YJCE 1999, s.17). It was not identified that the victim also had a learning disability resulting in an inability to comprehend complex questions. In order to facilitate this victim's participation an intermediary was required. However, an intermediary cannot be afforded under s.17 of the YJCEA (MOJ, 2011). Whilst a matter of law for the court to determine a witnesses competence13 (YJCE 1999, s.53 & s.54) the presence of a learning disability would have allowed a Special Measure gateway under s.16 (YJCEA), therefore submitting a witness' evidence to a court under s.17 YJCEA will equally disadvantage witnesses who would otherwise have benefitted from measures available under s.16 YJCEA 1999.

Case 4) This the case of an 81 year old female who was repeatedly raped (Sed v R [2004] EWCA Crim 1294). Medical evidence corroborated the offence taking place, it was found during the initial stages that the victim was suffering from dementia. Specialist VRE was obtained and whilst clearly not applicable under the gateway of age, the Special Measures direction was applicable under s16 (2) YJCEA – intellectual impairment. Without doubt the Sed v R case involves a vulnerable victim; crucially the vulnerability was defined early in the investigatory process and dealt with under the appropriate YJCEA gateway.

In session three you will be asked to pick one of these cases and discuss the following points:

Is this type of Special Measures application seen in practice?

How could some of these complications have been overcome during the initial investigation?

Are there any similar experiences you can share with the group/research?

Appendix C:

Deliberative Inquiry: Session Material – Session 2

Please find below some responses from other participants within this research. Please examine the responses and select one which you feel is pertinent to discuss with the group. Remember that the legislation being discussed is the Youth Justice and Criminal Evidence Act 1999 with reference to Special Measures for Vulnerable or Intimidated witnesses. Within this selection are views from advocates, academics and justices.

As an individual you should look to respond to the following questions:
Which participant's feedback did you choose?
Is this a reflection of current practice?
What are your views in reaction to this participant's feedback?

Quote 1: *The legislation is well directed and fit for purpose. The practical application lacks structure and direction, this is due to a lack of knowledge and understanding. Assessments are viewed as a hurdle not an attribute. Special measures are operationally viewed as complicating the judicial process.* 145856-145850-8895340

Quote 2: *The real problem is actually with the police service, poor interviewers, poor and inconsistent training, and failure to use specialist trained interviewers to carry out appropriate assessments of children and young people before calling an intermediary. The police have a long way to go to make victims and witnesses their first priority as they are too worried about PACE and bail conditions, and this isn't helped with the home office wanting to bring in time scales for the number of times a person can be bailed. The second issue is the problem with PACE v Victims code, all too often police will rush ABE's of children and young people because there is a suspect in the cell - there is little understanding by the criminal justice process that victims often need time to be able to disclose - however this is not reflected in how prisoners and victims are dealt with both by the police or the courts. There is still an in balance between victims and defendants /suspects. POLICE have to be the starting point to change attitudes, the college of policing are too slow in delivering new course material and quality assuring training so until that all comes into place, victims will continue to receive a poor service both from the police and the courts.* 145856-145850-8894972

Quote 3: *Cross examination of child witnesses should be discontinued, as my research indicates ALL children regardless of intellectual ability and vulnerability fail to give their best evidence under the current methods.* 145856-145850-8913766

Quote 4: *It makes no sense at all to talk about victims' rights within an adversarial system. From an ethical point of view there are massive contradictions depending on which practitioner within the system is being scrutinised. For police the ends can never justify the*

means. The utility or teleological ethics of Bentham infer that it's ok to sacrifice innocent people providing it's for the greater good. 145856-145850-8914513.

Quote 5: *Dicey's 'Rule of Law; is simple. 1. We are all equal before the law. 2. Only Courts can punish 3. There must be a separation of power's In this regard police are required ideally to be disinterested players who have no agenda at all. Hence the ends can never justify the means, Policing ethics are Deontological and not Teleological. Policing is about observing universal principles and Kantian ethics, 'Doing the right thing because its the right thing to do'. Yet for lawyers and social workers the ethical principles are completely different. In the adversarial legal system Lawyers are required to defend or prosecute. They are not allowed to be disinterested players in the system. The job of the defence lawyers is to establish a reasonable doubt. This is not a search for the truth. The job of prosecutor is to prosecute within the rules, which are mostly regards to the rights of the accused. 'Innocent until proven guilty'. A Social Worker belongs to a profession that can pick and choose their client base. Unlike police or lawyers. They are not required to be disinterested. They are simply required to act in the best interest of their client. The client can be a victim or a witness but is seldom a defendant or the accused. For police and lawyers gender should not play any role at all. For Social Workers it is so often the gender argument that wins the day. Witnesses and Victims are not always innocent observers. The Defendant is not always a bad person. Nor is the victim always a decent person. We have deserving victims, willing victims or innocent victims. The same applies to witnesses and defendants. The Criminal Justice System is a class driven and complicated system. It's often about individual responsibility when the causal factors of deviancy are structural, often poverty based. The first officer at the scene/first responder need more training in correctly categorising the witness at the first point of contact. This way the witness expectations are correctly managed. Police officers sometimes forget to involve the witness in the decision making process and think they know what is best for the witness without taking into consideration the witness views.* 145856-145850-8917107

Quote 6: *Use of special measures is undermined by lack of appropriate facilities in the courts.* 145856-145850-8966116

Quote 7: *My experience is as Crown Advocate prosecuting in the Crown Court. In my experience there is an effort to manage the process for victims in a responsible manner but that where the early identification of such victims is lacking it is more than likely due to allocation of resources being dependant on the ranking of seriousness of offences for investigation.* 145856-145850-8966300

Quote 8: *I have reviewed and prosecuted many trials involving victims and witnesses who required the use of special measures. I think that in certain cases it is essential for juries to see victims giving 'live' testimony.* 145856-145850-8967782

Quote 9: *Joint working and well planned interviews following assessment with RI, OIC/interviewing officer present is essential. Time given to this preparation is where I have seen the most positive changes over the past 6 years. Special measures - I have never been involved in a trial where SM have not been granted for VW. There have been a number of trials where the needs of the defendants have not been identified in terms of RI support and how the defendant understands and responds to questioning.* 145856-145850-9007307

Quote 10: *My experience is that too little consideration is given to both the decision whether to use ABE or whether special measures are needed or not. So it is not a case of systematic over or under use, just inadequate analysis and decision making. Different areas and even individuals have different practices and 'default positions.* 145856-145850-9043104

Quote 11: *General improvement and increase in knowledge re the YJCEA and certainly in implementation of intermediaries for vulnerable adults (I only work with adults so can't comment accurately about children). Special measures are being identified early by some teams (such as rape investigation teams and child abuse teams who work with these witnesses on a regular basis) very accurately and early in some geographical areas. There seems to be some confusion about using a written statement and professionals not seeing the consequences of this later on in the court process if the case does go to court.The advantages and disadvantages of written statement versus VRI are not being put clearly to the witness.*145856-145850-9111174

Quote 12: *As a member of intermediary review board, judge room working group and college of policing advisory group I see patches of excellent practice across some police authorities and individual officers, courts, cps and judges - I also see many examples of where guidance and tools are disregarded. The use of intermediaries and specialist young witness services like the ones victim support runs help address poor practice. Whilst the YJCE Act is the key basis of legislation it is important to see how the Victims Code and Advocates Gateway guidance has helped wider understanding and use of special measures.* 145856-145850-9139905

Quote 13: *I am a retired circuit Judge and formerly Queens Counsel. I have presided in many Criminal cases and handled a multitude of applications for Special Measures. I believe that the application of Special Measures in the Criminal Court is often hampered by inadequate equipment to show the footage recorded from the victim's interviews. Often interviews with victims are edited and sometimes for good reason. I have found that some Police Officers gather too much irrelevant detail to the offence and fail to appreciate that a jury has to be interested in what the victim is saying. Yes, there is a need to balance the investigation and often the Police will have certain forensic considerations but they should not rely on the victim to describe in detail a location where they have pictures or other evidence to show that angle of the case. I would however not want to discourage the gathering of precise detail about the offence. It is the case that the authority to charge is in part based on a witness's credibility and I should not want to discourage officers from dealing with those witnesses through the use of a video. However, in their assessment, and indeed the courts assessment, would a statement suffice? Officers and the CPS should think deeply about the application they are making. Do they really need a video interview or will a screen suffice. Applications for Special Measures are sometimes misjudged based on inaccurate assessments of the victim. Indeed I often wonder if fundamental questions are even asked. The communication between the Police and the CPS is woeful. I also wonder what some witnesses are told in relation to their involvement in a Criminal Trial. However, the court staff and witness volunteers are very helpful in preparing witnesses. I would like finish on a final point, and I do not wish to confuse this with my previous statements. However, there should be a frank discussion with witnesses as to how their can give evidence to the Police and a statement should not be the only option which is explained. Some thought should be applied to this area and a full assessment should be made. There is a great disconnection between the*

Police Officer and the court as many do not now give evidence. A lack of appreciation leaves an officer under prepared when speaking to witnesses. 145856-145850-11016002

Quote 14: *Magistrates courts are woefully underprepared to deal with video evidence and the Police often assume the needs of the witness rather than considering what the evidence that witness would give to a case.* 145856-145850-11030948

Quote 15: *I think there becomes an issue where officers assume the needs of the victim, or in some cases don't even assess it at all, and then try and cobble together an MG2 which is full of woffle and does not contain sufficient detail to allow applications to be considered and granted. There also seems no oversight within the system and some witnesses are let down by this.* 145856-145850-11069983

Quote 16: *In my view courts are not equipped to deal with vulnerable witnesses. The older courts often lack the facilities and technology. A court room can be very daunting for witnesses and the courts don't help that. Nor do late applications for special measures as courts often have to adjourn to all the measures to be put in place. This results in frustrated witnesses. I don't think that some officers understand the seriousness of giving evidence and done prepare some cases well enough or do a comprehensive assessment. The CPS and defence plea bargaining does not help. That should all be decided before the trial and not during.* 145856-145850-11117153

Quote 17: *In my experience our local courts tend to grant the use of special measures even if the prosecution have not identified the right gateway and/or have applied at a very late stage of proceedings. Very frustrating.* 145856-145850-11132695